

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re  LEHMAN BROTHERS HOLDINGS INC., et al.,  Debtors.	Chapter 11  Case No. 08-13555 (JMP) (Jointly Administered)
In re  LEHMAN BROTHERS INC.,  Debtor.	Case No. 08-01420 (JMP) SIPA

**STIPULATION REGARDING DEPOSITION DESIGNATIONS**

Lehman Brothers Holdings Inc.; James W. Giddens, as Trustee for the SIPA liquidation of Lehman Brothers Inc.; the Official Committee of Unsecured Creditors of Lehman Brothers Holdings Inc. (collectively, “Movants”); and Barclays Capital Inc. (“Barclays”), hereby stipulate to the following:

1. As part of their case in chief, the Movants designated selected deposition testimony from 18 witnesses: Paolo Tonucci, Alex Kirk, Michael Klein, Victor Lewkow, Edward Rosen, Michael Keegan, Stephen King, Gary Romain, David Petrie, Marty Malloy, Paul Exall, Alvin Brown, Robert Messineo, Alastair Blackwell, James Hraska, Nancy Denig, Anson Frelinghuysen, and Christopher Kiplok. Barclays counter-designated selected deposition testimony from those same 18 witnesses.

2. On June 14, 2010, the parties submitted to the Court full and accurate copies of the designated and counter-designated testimony from the witnesses (the “Designated Testimony”), as well as a chart cross-referencing the deposition exhibit numbers referenced in the Designated Testimony to Movants’ and Barclays’ trial exhibit numbers (the “Exhibit Chart”).

The Designated Testimony and a revised version of the Exhibit Chart are attached hereto as Movants' Exhibit 719. The parties expressly reserve any and all pending objections to any such exhibits that have not yet been admitted into evidence.

3. The parties will meet and confer to establish an efficient procedure to determine any objections to the Designated Testimony. Any objections that cannot be resolved between the parties will be brought before the Court for resolution, at the Court's convenience. Subject to any objections that are upheld by the Court, the Designated Testimony will be entered into evidence.

JONES DAY

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**SO ORDERED:**

Dated: New York, New York  
June 23, 2010

s/ James M. Peck  
Honorable James M. Peck  
United States Bankruptcy Judge

***In re Lehman Brothers Holdings Inc. No. 08-13555(JMP)***  
DEPOSITION DESIGNATIONS AND COUNTER-DESIGNATIONS

Yellow Highlighting = Testimony Designated by Movants

Blue Highlighting = Testimony Counter-Designated by Barclays

**Witness**

Paolo Tonucci, 8/14/2009

Alex Kirk, 8/31/2009

Michael Klein, 9/12/2009

Victor Lewkow, 2/10/2010

Edward Rosen, 2/19/2010

Michael Keegan, 8/28/2009

Stephen King, 9/10/2009

Gary Romain, 9/10/2009

David Petrie, 8/26/2009

Marty Malloy, 3/1/2010

Paul Exall, 8/27/2009

Alvin Brown, 1/8/2010

Robert Messineo, 4/1/2010

Alastair Blackwell, 8/7/2009

James Hraska, 8/14/2009

James Hraska, 1/15/2010

Nancy Denig, 8/21/2009

Anson Frelinghuysen, 3/4/2010

Christopher Kiplok, 3/4/2010

MOVANTS' TRIAL  
EXHIBIT

719



1                   HIGHLY CONFIDENTIAL - PAOLO TONUCCI  
2                   UNITED STATES BANKRUPTCY COURT  
3                   SOUTHERN DISTRICT OF NEW YORK

1

4   - - - - -

5   In Re:

Chapter 11

6

7   LEHMAN BROTHERS   Case No. 08-13555(JMP)  
HOLDINGS, INC. et al., (Jointly Administered)

8

9                   Debtors.

10   - - - - -

11                   HIGHLY CONFIDENTIAL  
12                   DEPOSITION OF PAOLO TONUCCI  
13                   Friday 14 August 2009  
14                   At:   7:00 am  
15                   Taken at:  
16                   Jones Day  
                  21 Tudor Street  
17                   London  
                  United Kingdom

18

19   Reported by: AILSA WILLIAMS  
Certified LiveNote Reporter

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<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b></p> <p>2       Schiller &amp; Flexner representing Barclays.</p> <p>3       MR. TAMBE: Erica, can you hear us?</p> <p>4       MS TAGGART: Yes, thank you.</p> <p>5       MR. TAMBE: Morning, Mr. Tonucci. By</p> <p>6       whom are you currently employed?</p> <p>7       A. Barclays.</p> <p>8       Q. In what capacity?</p> <p>9       A. I work in the treasury area.</p> <p>10      Q. What is your position?</p> <p>11      A. Head of group balance sheet.</p> <p>12      Q. And is that head of group balance sheet</p> <p>13      for global operations?</p> <p>14      A. That is right, for global operations.</p> <p>15      Q. How long have you held that position?</p> <p>16      A. Since February of this year.</p> <p>17      Q. How long have you been employed by</p> <p>18      Barclays?</p> <p>19      A. Since September, 26 September 2008.</p> <p>20      Q. What was your position at Barclays when</p> <p>21      you first joined Barclays in September 2008?</p> <p>22      A. US treasurer for Barclays Capital.</p> <p>23      Q. If you could describe for us briefly</p> <p>24      what your duties have been since you joined</p> <p>25      Barclays, both as US treasurer and now as global</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b></p> <p>2       <b>treasurer?</b></p> <p>3       A. I am not the global treasurer.</p> <p>4       Q. Okay.</p> <p>5       A. Head of global balance sheet. The US</p> <p>6       treasurer role was focused on liquidity and</p> <p>7       capital management for the US Barclays Capital</p> <p>8       operations and the role with group treasury, the</p> <p>9       global balance sheet role is responsible for</p> <p>10      funding and hedging for the group's balance sheet</p> <p>11      globally.</p> <p>12      Q. Before joining Barclays</p> <p>13      in September 2008 you were employed by Lehman</p> <p>14      Brothers, correct?</p> <p>15      A. That is correct.</p> <p>16      Q. And what Lehman Brothers entities were</p> <p>17      you employed by?</p> <p>18      A. LBHI and LBI.</p> <p>19      Q. Collectively for the Lehman entities</p> <p>20      when did you first begin working for the Lehman</p> <p>21      entities?</p> <p>22      A. December 1996.</p> <p>23      Q. If you can give us a brief overview of</p> <p>24      your career at Lehman, the positions you held, the</p> <p>25      time periods that you held them for?</p>
Page 8	Page 9
<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b></p> <p>2       A. Yes. I joined Lehman as head of or</p> <p>3       manager for the fixed income derivatives product</p> <p>4       control team from 96 to 98.</p> <p>5       From 98 to 2000 I was manager of fixed income</p> <p>6       liquid markets product control.</p> <p>7       From 2000 to 2002 I was head of asset and</p> <p>8       liability management for Europe within the treasury area.</p> <p>9       From 2002 until 2005 I was head of assets and</p> <p>10      liability management for the group globally in New York.</p> <p>11      From 2005, or in 2005 I was international treasurer and then</p> <p>12      also through 2005 to 2000 onwards I was global treasurer.</p> <p>13      Q. And in your capacity as global treasurer</p> <p>14      for the Lehman entities, could you briefly</p> <p>15      describe what your duties were?</p> <p>16      A. Responsible for funding liquidity and</p> <p>17      capital management for the group.</p> <p>18      Q. And to whom did you directly report in</p> <p>19      that capacity?</p> <p>20      A. To the CFO.</p> <p>21      Q. In the time period, say, in 2008, who</p> <p>22      were your direct reports at Lehman?</p> <p>23      A. Most recently in 2008, Robert Azerad,</p> <p>24      Dan Fleming, Janet Birney.</p> <p>25      Q. The last name?</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b></p> <p>2       A. B-I-R-N-E-Y. Julie Boyle, B-O-Y-L-E.</p> <p>3       Jackie F-R-O-M-M-E-R and Kevin Thatcher.</p> <p>4       Q. Mr. Azerad, what was his position and</p> <p>5       role at Lehman?</p> <p>6       A. He was responsible for liquidity</p> <p>7       management.</p> <p>8       Q. And Mr. Fleming?</p> <p>9       A. For cash management.</p> <p>10      Q. And when you use the phrase "liquidity</p> <p>11      management", what do you mean by that?</p> <p>12      A. I mean for the tracking, reporting, and</p> <p>13      execution of liquidity oversight.</p> <p>14      Q. Does liquidity management include</p> <p>15      arranging for repurchase agreements and other</p> <p>16      forms of financing for the Lehman entities?</p> <p>17      A. Generally not.</p> <p>18      Q. Who within Lehman would have been</p> <p>19      responsible for repurchase agreements and</p> <p>20      liquidity, financing of that nature?</p> <p>21      A. Secured financing was managed within the</p> <p>22      prime brokerage team and overseen by John Coghlan.</p> <p>23      Q. And John was not one of your direct</p> <p>24      reports, is that correct?</p> <p>25      A. He was not, no.</p>

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 14</p> <p>2 repos was greater than would typically have been</p> <p>3 the case for a much larger set of repos.</p> <p>4 <b>Q. And your personal involvement in those</b></p> <p>5 <b>particular repos was much greater than your</b></p> <p>6 <b>involvement had been on prior repos. Is that</b></p> <p>7 <b>correct?</b></p> <p>8 MR. HUME: Object to the form of the</p> <p>9 question and to the lack of foundation. I think</p> <p>10 if you have e-mails you should show him to</p> <p>11 characterize what you are asking.</p> <p>12 MR. TAMBE: Do you have my question in</p> <p>13 mind?</p> <p>14 A. I am not sure, this point about much</p> <p>15 more involved, it is difficult for me to respond</p> <p>16 to. I would say that there was slightly more</p> <p>17 involvement than there would have been in a normal</p> <p>18 day's repo activity but I would not say that I was</p> <p>19 much more involved, no.</p> <p>20 <b>Q. Let's see what you were involved in</b></p> <p>21 <b>during that week broadly. I am going to start in</b></p> <p>22 <b>this period beginning September 12, Friday</b></p> <p>23 <b>through September 22, the Monday. Start at the</b></p> <p>24 <b>beginning, September 12, and just generally tell</b></p> <p>25 <b>me what your involvement was in the events of that</b></p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 15</p> <p>2 <b>weekend, in terms of possibly doing transactions</b></p> <p>3 <b>with buyers, the filing of the bankruptcy, your</b></p> <p>4 <b>role in the sale of assets to Barclays and finally</b></p> <p>5 <b>the closing of the transaction on September 22,</b></p> <p>6 <b>and we will take it in pieces but I want to get an</b></p> <p>7 <b>overview of your recollection of your involvement</b></p> <p>8 <b>during that ten day period. Okay?</b></p> <p>9 A. Okay.</p> <p>10 <b>Q. Let's start with the weekend before the</b></p> <p>11 <b>filing of the bankruptcy. What were you involved</b></p> <p>12 <b>in starting on Friday, September 12?</b></p> <p>13 A. Friday was a trading day and so the</p> <p>14 range of activity included overseeing our</p> <p>15 financing position that day and our financing --</p> <p>16 our liquidity forecasting, which I would</p> <p>17 characterize as regular daily activity, regular</p> <p>18 daily oversight.</p> <p>19 There was due diligence, specifically</p> <p>20 with Bank of America for much of that day, and</p> <p>21 there was towards the end of the day discussion</p> <p>22 with Barclays directly and with the due diligence</p> <p>23 teams at one other potential buyer.</p> <p>24 <b>Q. What other potential buyer?</b></p> <p>25 A. Nomura, but I didn't speak to them</p>
Page 16	Page 17
<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 16</p> <p>2 directly.</p> <p>3 <b>Q. And I gather from your answer then you</b></p> <p>4 <b>were speaking directly with the due diligence</b></p> <p>5 <b>teams from Bank of America?</b></p> <p>6 A. Yes.</p> <p>7 <b>Q. And you had direct discussions with</b></p> <p>8 <b>Barclays towards the end of the day on the 12th?</b></p> <p>9 A. Yes, in the capacity of due diligence,</p> <p>10 not negotiations.</p> <p>11 <b>Q. And when you mean in capacity of due</b></p> <p>12 <b>diligence you were providing information?</b></p> <p>13 A. That is right.</p> <p>14 <b>Q. In terms of liquidity management on the</b></p> <p>15 <b>12th, were there any particular constraints on</b></p> <p>16 <b>Lehman or challenges for Lehman in terms of</b></p> <p>17 <b>managing its liquidity for operations on the 12th?</b></p> <p>18 A. Yes.</p> <p>19 <b>Q. Can you describe what those constraints</b></p> <p>20 <b>were?</b></p> <p>21 A. There was a large cash request from</p> <p>22 JP Morgan, which was for \$5 billion in cash, and</p> <p>23 that was a significant challenge. There were</p> <p>24 changes being made to secured funding haircuts and</p> <p>25 collateral agreements and there were margin</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 17</p> <p>2 requests from a variety of clients. So overall</p> <p>3 I would characterize it as extremely busy and</p> <p>4 complicated.</p> <p>5 <b>Q. You used a phrase, "There were changes</b></p> <p>6 <b>in secured funding haircuts", is that right? I</b></p> <p>7 <b>want to understand what you mean by "haircuts"?</b></p> <p>8 A. The difference between the market value</p> <p>9 and the cash received is known as the haircut in</p> <p>10 a secured funding arrangement, the market value of</p> <p>11 the securities I should say.</p> <p>12 <b>Q. So is it fair to say that the haircut</b></p> <p>13 <b>allows you to determine how much cash you can</b></p> <p>14 <b>borrow against a given market value of securities?</b></p> <p>15 A. That is correct.</p> <p>16 <b>Q. And what were the changes in haircuts on</b></p> <p>17 <b>the 12th, generally?</b></p> <p>18 A. Generally, they were that the haircuts</p> <p>19 were widening, but I don't have any specifics. I</p> <p>20 don't recall any specifics.</p> <p>21 <b>Q. We go into the weekend of 13 and 14</b></p> <p>22 <b>September. Describe for me what you were --</b></p> <p>23 <b>describe for me what your duties were that weekend</b></p> <p>24 <b>and what you were doing that weekend?</b></p> <p>25 A. Due diligence continued. Discussion</p>

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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 18	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 19
2	with the internal team on potential outcomes and	2	<b>Q. Nomura, was that still a potential</b>
3	the management of potential purchases. Some	3	<b>purchaser?</b>
4	discussion with external lawyers acting for the	4	A. Not that I was aware of.
5	Board in terms of fairness opinions.	5	<b>Q. Other than those three were any other</b>
6	<b>Q. Generally, when you are talking about</b>	6	<b>potential purchasers discussed that weekend?</b>
7	<b>interactions you had with external counsel for</b>	7	A. Not that I am aware of.
8	<b>Lehman Brothers during that time period, you can</b>	8	<b>Q. When you say you had discussions with</b>
9	<b>identify that you had those contacts but I would</b>	9	<b>the internal team, who was the internal team that</b>
10	<b>urge you not to disclose the substance of your</b>	10	<b>you were having discussions with?</b>
11	<b>conversations with external counsel for Lehman.</b>	11	A. Largely with Ian Lowitt but with other
12	<b>Understood?</b>	12	members of Lehman's senior management.
13	A. Yes.	13	<b>Q. Do you recall any of the other members</b>
14	<b>Q. I mean when my question is requesting an</b>	14	<b>of senior management that you had discussions with</b>
15	<b>answer of that type, just alert me if you think</b>	15	<b>that weekend?</b>
16	<b>you are going to have to tell me about</b>	16	A. Bart McDade, Tom Russo, Stephen
17	<b>conversations with external counsel. Fair?</b>	17	Berkenfeld, Alex Kirk.
18	A. Yes.	18	<b>Q. Any others?</b>
19	<b>Q. In terms of who the potential purchasers</b>	19	A. I can't recall.
20	<b>being discussed were over the weekend</b>	20	<b>Q. When did you first learn that Lehman</b>
21	<b>of September 13 and 14, you had BFA, correct?</b>	21	<b>Brothers Holdings Inc was contemplating</b>
22	A. Correct.	22	<b>a bankruptcy filing?</b>
23	<b>Q. Barclays was still a potential</b>	23	A. I believe first contemplated on
24	<b>purchaser?</b>	24	Saturday.
25	A. Barclays was the most likely purchaser.	25	<b>Q. Were you asked to perform any tasks</b>
Page 20		Page 21	
1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 20	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 21
2	<b>specifically in connection with contemplated</b>	2	<b>maturing, so the discussion to the extent that</b>
3	<b>filing of the bankruptcy?</b>	3	<b>there was any was really just about executing that</b>
4	A. Only one comes to mind, which was to	4	<b>transaction.</b>
5	make a payment to Weil Gotshal.	5	<b>Q. When you say "that transaction", the Fed</b>
6	<b>Q. We go ahead with the bankruptcy filing</b>	6	<b>transaction?</b>
7	<b>on September 15. Describe for me the kinds of</b>	7	A. With the Fed, yes.
8	<b>things you were doing on September 15. What was</b>	8	<b>Q. Were you involved in executing the</b>
9	<b>your day like?</b>	9	<b>transaction with the Fed?</b>
10	A. So the filing happened in the early	10	A. Not executing it, no.
11	hours of the morning and there was great confusion	11	<b>Q. Were you involved with negotiating the</b>
12	about the consequences of that, so much of the day	12	<b>transaction with the Fed?</b>
13	was spent fielding telephone calls from various	13	A. No.
14	parts of the organization within Lehman, some from	14	<b>Q. What was your involvement with the Fed</b>
15	external counterparties seeking clarification as	15	<b>transaction?</b>
16	to the position, which entities may have filed and	16	A. Only overseeing the collateral, the
17	the position of the remaining entities, and trying	17	collateral allocation and the cash received
18	to oversee the position and funding for LBI, the	18	afterwards.
19	US broker dealer.	19	<b>Q. When you say "overseeing collateral</b>
20	<b>Q. Describe for me what actions you took</b>	20	<b>allocation", what was your role in overseeing?</b>
21	<b>and conversations you had in connection with the</b>	21	<b>What specifically did you do to oversee collateral</b>
22	<b>funding for LBI, the US broker dealer on the 15th?</b>	22	<b>allocation on the Fed repo?</b>
23	A. We had been instructed that the Fed	23	A. I reviewed the collateral that had been
24	would be providing secured financing and that	24	allocated and the cash that had been received
25	other secured financing arrangements would be	25	against that collateral. My role was largely

Page 22	Page 23
<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 22</p> <p>2 analytical and much of the liquidity oversight is</p> <p>3 an analytical function. It is explaining the</p> <p>4 changes in the liquidity position and explaining</p> <p>5 the financing arrangements in the context of the</p> <p>6 overall financial picture and balance sheet of the</p> <p>7 entity. So I don't know -- my group did not book</p> <p>8 the transactions or the allocations, but clearly</p> <p>9 it was important to understand the substance of</p> <p>10 the transaction and detail of the transaction that</p> <p>11 was executed to get a clear picture of the</p> <p>12 financial position of the entity.</p> <p>13 Q. Who booked the transaction?</p> <p>14 A. The secured funding area.</p> <p>15 Q. Mr. Coghlan's group?</p> <p>16 A. Yes.</p> <p>17 Q. Did you have conversations with</p> <p>18 Mr. Coghlan about the Fed funding on the 15th?</p> <p>19 A. I don't recall.</p> <p>20 Q. You said you reviewed the collateral.</p> <p>21 What were you reviewing the collateral allocated</p> <p>22 for. Let me restate that. You stated earlier you</p> <p>23 reviewed the collateral allocated. For what</p> <p>24 purpose were you reviewing the collateral</p> <p>25 allocated?</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 23</p> <p>2 A. I have already explained that, to</p> <p>3 understand the financial position of the entity.</p> <p>4 It is obviously pertinent to the financial</p> <p>5 position of the entity to understand the</p> <p>6 collateral that has been transferred and the value</p> <p>7 received for that.</p> <p>8 Q. So your review includes what specific</p> <p>9 pieces of collateral that have been allocated, is</p> <p>10 that right?</p> <p>11 A. That is right.</p> <p>12 Q. And you also did a review of what values</p> <p>13 had been ascribed to that collateral?</p> <p>14 A. That is right.</p> <p>15 Q. Let's talk about the values ascribed to</p> <p>16 the collateral allocated. Who determines the</p> <p>17 values of the collateral, the market value of the</p> <p>18 collateral that is being allocated for financing?</p> <p>19 A. The tri-party provider in the case of</p> <p>20 a tri-party repo transaction.</p> <p>21 Q. And was the Fed funding a tri-party</p> <p>22 funding?</p> <p>23 A. It was.</p> <p>24 Q. Who was the third party?</p> <p>25 A. JP Morgan and Chase.</p>
Page 24	Page 25
<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 24</p> <p>2 Q. So would it be correct to say that</p> <p>3 JP Morgan and Chase would determine the values for</p> <p>4 the collateral allocated by Lehman for the Fed</p> <p>5 funding on September 15, is that correct?</p> <p>6 A. Yes.</p> <p>7 Q. And the applicable haircuts would then</p> <p>8 be applied to the JP Morgan valuation, is that</p> <p>9 correct?</p> <p>10 A. That is correct.</p> <p>11 Q. Now, Lehman would have its own values</p> <p>12 for the collateral that was allocated to this</p> <p>13 funding, correct?</p> <p>14 A. That is correct.</p> <p>15 Q. Was part of your review to see how the</p> <p>16 JP Morgan values differed from the Lehman values</p> <p>17 for the same collateral?</p> <p>18 A. It was.</p> <p>19 Q. Do you recall generally if the JP Morgan</p> <p>20 values were higher, lower or the same?</p> <p>21 A. I don't recall.</p> <p>22 Q. Do you recall there being any</p> <p>23 significant discrepancy at any time with the</p> <p>24 JP Morgan prices for the collateral during that</p> <p>25 week, September 15?</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 25</p> <p>2 MR. HUME: Object to the form of the</p> <p>3 question. Any time during the week?</p> <p>4 MR. TAMBE: Yes.</p> <p>5 A. I don't recall.</p> <p>6 Q. Generally, as a matter of mechanics,</p> <p>7 when the tri-party provider had done a valuation</p> <p>8 of collateral and that valuation was significantly</p> <p>9 lower than the Lehman valuation, that would affect</p> <p>10 how much money you could borrow, correct?</p> <p>11 A. That is correct.</p> <p>12 Q. So you would probably disagree with the</p> <p>13 valuation done by the third tri-party provider,</p> <p>14 correct?</p> <p>15 MR. HUME: Object to the form of the</p> <p>16 question.</p> <p>17 A. No.</p> <p>18 Q. You had no ability to disagree?</p> <p>19 A. We had no ability to disagree, nor do we</p> <p>20 have an ability to negotiate the haircuts provided</p> <p>21 by the Fed or by other lenders.</p> <p>22 Q. I am not talking about the haircut, I am</p> <p>23 talking about the market value of the collateral</p> <p>24 before you apply the haircuts?</p> <p>25 A. We had no ability to object.</p>

<p style="text-align: right;">Page 26</p> <p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 26</p> <p>2 I certainly did not.</p> <p>3 Q. Do you recall what the term was of the</p> <p>4 Fed funding that was put in place on 15 September?</p> <p>5 A. I believe it was overnight.</p> <p>6 Q. Moving to the 16th, was that facility</p> <p>7 rolled over on the 16th?</p> <p>8 A. The majority of the facility was rolled</p> <p>9 over. Barclays provided some financing as well so</p> <p>10 the amount of the facility with the Fed reduced.</p> <p>11 Q. Before we get to the 16th, on the 15th,</p> <p>12 other than dealing with the Fed funding, were you</p> <p>13 also involved in any discussions about a possible</p> <p>14 acquisition of the North American assets by</p> <p>15 Barclays?</p> <p>16 A. I was not, no.</p> <p>17 Q. Were you aware that Barclays had</p> <p>18 returned to Lehman to engage Lehman in discussions</p> <p>19 about that?</p> <p>20 A. I was aware, yes.</p> <p>21 Q. How did you become aware of that?</p> <p>22 A. I can't remember who advised me but</p> <p>23 someone, one of the senior members of the firm had</p> <p>24 advised me that that was the case.</p> <p>25 Q. On the 15th through the morning of the</p>	<p style="text-align: right;">Page 27</p> <p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 27</p> <p>2 16th were you involved in any negotiations with</p> <p>3 Barclays about the purchase by Barclays of</p> <p>4 Lehman's North American assets?</p> <p>5 A. I was not.</p> <p>6 Q. But you were aware those negotiations</p> <p>7 were taking place, correct?</p> <p>8 A. I was.</p> <p>9 Q. Did you provide any due diligence</p> <p>10 information in that time period?</p> <p>11 A. I don't believe so.</p> <p>12 Q. What was your understanding of what</p> <p>13 transaction was being contemplated on the 15th</p> <p>14 over into the 16th between Lehman and Barclays?</p> <p>15 A. I understood that it was the purchase of</p> <p>16 the business and assets, some selection of assets</p> <p>17 of the North American Lehman Brothers business.</p> <p>18 Q. And either on the 15th or 16th did you</p> <p>19 have any understanding of what the economics of</p> <p>20 that deal were?</p> <p>21 MR. HUME: Objection, lacks foundation.</p> <p>22 A. Not really. I mean, I was aware of the</p> <p>23 balance sheet that was being agreed at a very</p> <p>24 summary level and, as I am sure you know, Martin</p> <p>25 Kelly sent me a note advising me of some of the</p>
<p style="text-align: right;">Page 28</p> <p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 28</p> <p>2 details, so I had a very general sense of the</p> <p>3 substance of the transaction, but to say that</p> <p>4 I understood the economics would be, you know,</p> <p>5 would not be accurate.</p> <p>6 Q. The Martin Kelly e-mail that you are</p> <p>7 referring to, is that the one that talks about the</p> <p>8 5 billion-dollar loss?</p> <p>9 A. That is right.</p> <p>10 Q. Let's take a look at that e-mail. It is</p> <p>11 136A.</p> <p>12 (Exhibit 136A marked for identification)</p> <p>13 MR. HUME: Is that a new number?</p> <p>14 MR. TAMBE: Yes.</p> <p>15 MR. HUME: Has this document not been</p> <p>16 made an exhibit yet?</p> <p>17 MR. TAMBE: I just do not know if it has</p> <p>18 been. Wherever possible we are trying to avoid</p> <p>19 re-marking exhibits. My guess is this one has</p> <p>20 been. We could not figure out what the number</p> <p>21 was.</p> <p>22 Mr. Tonucci, I have placed before you</p> <p>23 a document marked Exhibit 136A. Is that the</p> <p>24 e-mail that you were referring to?</p> <p>25 A. That is correct.</p>	<p style="text-align: right;">Page 29</p> <p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 29</p> <p>2 Q. That is an e-mail from Martin Kelly, you</p> <p>3 are cc'd on that e-mail at the bottom. Do you see</p> <p>4 that?</p> <p>5 A. Yes.</p> <p>6 Q. There is a reference in there to a</p> <p>7 "\$5 billion all in economic loss versus our</p> <p>8 marks". Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. What was your understanding of that</p> <p>11 phrase? What did that mean?</p> <p>12 A. I read that to mean that there would be</p> <p>13 a discount to the marks at that time on the</p> <p>14 assets.</p> <p>15 Q. And this notion of a discount on the</p> <p>16 marks on the assets, was that a feature of the</p> <p>17 transaction that ultimately persisted with the</p> <p>18 transaction as it unfolded?</p> <p>19 MR. HUME: Objection, calls for</p> <p>20 speculation and lacks foundation.</p> <p>21 A. Can you repeat?</p> <p>22 Q. Let me rephrase. You understood the</p> <p>23 5 billion dollars all in economic loss versus our</p> <p>24 marks to be a reference to a discount off the</p> <p>25 marks, correct?</p>

<p style="text-align: right;">Page 30</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       30</p> <p>2       A. Yes.</p> <p>3       Q. The deal that was ultimately done and</p> <p>4       closed on September 22, that too included</p> <p>5       a discount off of Lehman's marks, correct?</p> <p>6       A. That is correct.</p> <p>7       Q. Okay, and the amount of that discount</p> <p>8       off of Lehman's marks was about \$5 billion, is</p> <p>9       that right?</p> <p>10      MR. HUME: Objection, lacks foundation.</p> <p>11      A. It is uncertain, because obviously there</p> <p>12      were a lot of valuation movements and so</p> <p>13      I couldn't say with certainty, but certainly what</p> <p>14      I can say is versus the valuations that I recall</p> <p>15      seeing from our analysis it was about that number.</p> <p>16      Q. About \$5 billion?</p> <p>17      A. About \$5 billion.</p> <p>18      Q. Was it your understanding that about</p> <p>19      a \$5 billion discount was a negotiated amount of</p> <p>20      discount?</p> <p>21      MR. HUME: Objection, lacks foundation.</p> <p>22      A. Only insofar as what I can read in this</p> <p>23      e-mail.</p> <p>24      Q. Here is what I am getting at. This</p> <p>25      e-mail, 136A, is sent to you on</p>	<p style="text-align: right;">Page 31</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       31</p> <p>2       early September 16, correct? The deal that is</p> <p>3       contemplated on the 16th changes in many ways by</p> <p>4       the 22nd, correct?</p> <p>5       A. Yes.</p> <p>6       Q. The amount of the discount in this</p> <p>7       e-mail, the \$5 billion you are telling me was</p> <p>8       about the discount when all was said and done at</p> <p>9       the end of the day, is that correct?</p> <p>10      A. That is correct.</p> <p>11      Q. Is it your understanding that the</p> <p>12      \$5 billion amount was the agreed upon discount for</p> <p>13      the transaction?</p> <p>14      MR. HUME: Objection, the witness has</p> <p>15      said he did not participate in the negotiations</p> <p>16      and so the question lacks foundation.</p> <p>17      A. Only as I said from what I read here. I</p> <p>18      didn't have any further discussions about the</p> <p>19      discount that I can recall.</p> <p>20      Q. Do you have an understanding of how the</p> <p>21      discount was effected, how was the discount made</p> <p>22      available to Barclays?</p> <p>23      MR. HUME: Objection, vague and</p> <p>24      ambiguous.</p> <p>25      A. Do you want to reword that?</p>
<p style="text-align: right;">Page 32</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       32</p> <p>2       Q. Do you have trouble with the question?</p> <p>3       A. Not sure what you mean.</p> <p>4       Q. How did Barclays get the</p> <p>5       5 billion-dollar discount?</p> <p>6       A. Right. I think what was contemplated in</p> <p>7       the negotiation, and what was executed in terms of</p> <p>8       the settlement probably differed slightly, you</p> <p>9       know, and involved over the week the settlement of</p> <p>10      the transaction, meaning the actual transfer of</p> <p>11      securities and cash was through the repo</p> <p>12      agreements, and essentially the termination of</p> <p>13      those repo agreements.</p> <p>14      Q. Was the discount given to Barclays by</p> <p>15      defaulting on the repo?</p> <p>16      MR. HUME: Objection. You are asking</p> <p>17      the witness very general questions about</p> <p>18      a complicated transaction without walking him</p> <p>19      through any of the details of that transaction. I</p> <p>20      think the line of questioning lacks foundation.</p> <p>21      MR. TAMBE: You have an objection to</p> <p>22      form, right, Hamish? So noted. Answer the</p> <p>23      question, please.</p> <p>24      MR. HUME: I think the line of</p> <p>25      questioning is calling for speculation and lacks</p>	<p style="text-align: right;">Page 33</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       33</p> <p>2       foundation.</p> <p>3       MR. TAMBE: Do you remember my question?</p> <p>4       Probably not. Do you want it read back?</p> <p>5       A. Yes, please.</p> <p>6       (Read back)</p> <p>7       A. Yes, I would say that was the way in</p> <p>8       which the transaction was settled, so that is</p> <p>9       fair.</p> <p>10      Q. Would it also be fair to say, therefore,</p> <p>11      that the discount was embedded in the haircut on</p> <p>12      the repo transaction?</p> <p>13      MR. HUME: Objection, what discount?</p> <p>14      MR. TAMBE: The 5 billion-dollar</p> <p>15      discount.</p> <p>16      MR. HUME: What 5 billion-dollar</p> <p>17      discount? You have not established or laid any</p> <p>18      record of foundation.</p> <p>19      MR. TAMBE: Hamish, make objection to</p> <p>20      form, move on. Don't make speaking objections.</p> <p>21      MR. HUME: The objection is this is</p> <p>22      a deliberately ambiguous and misleading line of</p> <p>23      questioning.</p> <p>24      MR. TAMBE: Do you have my question in</p> <p>25      mind?</p>



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<p>1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           34</p> <p>2       A. Could you repeat it please or read it</p> <p>3       back.</p> <p>4               (Read back)</p> <p>5       A. In a repo transaction there is haircut,</p> <p>6       a difference between the market value and the cash</p> <p>7       value received. You could view that as</p> <p>8       a discount. I think in this case it is fair to</p> <p>9       say that that was the settlement mechanics and</p> <p>10       therefore the way that the difference between</p> <p>11       market value and cash paid was accomplished.</p> <p>12       There was in that sense a discount.</p> <p>13       Q. So I understand your last answer, there</p> <p>14       was a 5 billion-dollar differential, roughly,</p> <p>15       between the cash paid by Barclays and the market</p> <p>16       value of the collateral they received, correct?</p> <p>17       A. That was when I looked at our analysis,</p> <p>18       that was about the size of the number.</p> <p>19       Q. Let's go back to the week of the 16th.</p> <p>20       You get the e-mail from Martin Kelly telling you</p> <p>21       about at least an agreement in principle, correct?</p> <p>22       A. That is correct.</p> <p>23       Q. Let's move forward from there. You have</p> <p>24       got on the 16th a Fed funding facility in place,</p> <p>25       correct. Right?</p>	<p>1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           35</p> <p>2       A. That is correct.</p> <p>3       Q. And you have got a repo from Barclays as</p> <p>4       well, correct?</p> <p>5       A. Yes.</p> <p>6       Q. And there was a pre-existing master</p> <p>7       repurchase agreement with Barclays, correct?</p> <p>8       A. I believe so.</p> <p>9       Q. That was amended on Monday September 15?</p> <p>10       A. I believe so.</p> <p>11       Q. Were you involved in the amendment to</p> <p>12       that?</p> <p>13       A. I was not.</p> <p>14       Q. Who was?</p> <p>15       A. I don't know.</p> <p>16       Q. Do you have an under standing of what</p> <p>17       the terms were of the Barclays -- the amended</p> <p>18       Barclays repurchase agreement?</p> <p>19       A. I don't really recall, no.</p> <p>20       Q. Am I right to believe that there are</p> <p>21       haircut schedules associated with repo agreements?</p> <p>22       A. Correct.</p> <p>23       Q. There was such a haircut schedule in</p> <p>24       connection with the Fed repo, correct?</p> <p>25       A. There was.</p>
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<p>1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           36</p> <p>2       Q. And there was a haircut schedule on the</p> <p>3       Barclays repo, correct?</p> <p>4       A. I believe so, yes.</p> <p>5       Q. Do you recall there being any</p> <p>6       significant difference between the haircuts on the</p> <p>7       Fed repo and the haircuts on the Barclays repo?</p> <p>8       MR. HUME: Objection.</p> <p>9       A. There were certainly differences, I</p> <p>10       can't recall how significant.</p> <p>11       Q. Do you remember if there were particular</p> <p>12       asset classes in which there were differences?</p> <p>13       A. I don't, no.</p> <p>14       Q. The Fed repo was an overnight repo,</p> <p>15       right?</p> <p>16       A. Correct.</p> <p>17       Q. So it rolled over from the 15th to the</p> <p>18       16th?</p> <p>19       A. Correct.</p> <p>20       Q. And rolled over again from the 16th to</p> <p>21       the 17th?</p> <p>22       A. Not the same size, no.</p> <p>23       Q. Tell me briefly what the changes were,</p> <p>24       if any, in the size of the Fed repo from Monday to</p> <p>25       Tuesday to later in the week?</p>	<p>1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           37</p> <p>2       A. I can't recall the exact details. I</p> <p>3       recall that the Barclays repo on the -- again, I</p> <p>4       am not certain about this but the Barclays repo on</p> <p>5       the 16th, I believe, was for \$5 billion. On the</p> <p>6       17th I believe it was for \$8 billion and then on</p> <p>7       the Thursday there was obviously a much bigger</p> <p>8       transaction and so that changed the Fed repo,</p> <p>9       which became zero.</p> <p>10       Q. Let's talk about that bigger transaction</p> <p>11       on Thursday, okay. Describe for me how the Fed</p> <p>12       repo went to zero and what happened with the</p> <p>13       Barclays repo on Thursday?</p> <p>14       A. It is difficult for me to talk about the</p> <p>15       mechanics because I am not that close to the</p> <p>16       operational mechanics of the repo being unwound,</p> <p>17       but my understanding was that the repo unwound on</p> <p>18       the Thursday morning, which would be typical in</p> <p>19       a tri-party repo, that an overnight repo would</p> <p>20       unwind, you would return the collateral and the</p> <p>21       cash and the transactions would then settle with</p> <p>22       that collateral that was released, and at the end</p> <p>23       of the day a new financing transaction would be</p> <p>24       settled.</p> <p>25       In this instance there was complexity because</p>



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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 38</p> <p>2 JP Morgan was the tri-party agent for Lehman and had been</p> <p>3 the tri-party agent in the transaction with the Fed. BONY</p> <p>4 was the tri-party agent for Barclays and so there was a need</p> <p>5 to transfer collateral from JP Morgan to Bank of New York</p> <p>6 tri-party system, and I am not sure about the mechanics</p> <p>7 involved in that transfer but it was clearly a more</p> <p>8 complicated transaction than if the financing had just been</p> <p>9 through the JP Morgan tri-party system.</p> <p>10 Q. Is it your understanding that on</p> <p>11 Thursday, in this bigger transaction on Thursday,</p> <p>12 Barclays effectively replaced the Fed and the Fed</p> <p>13 funding transaction?</p> <p>14 A. I was not involved in the discussions</p> <p>15 with Barclays or with the Fed on the removal or</p> <p>16 replacement of the Fed in that transaction, so I</p> <p>17 can't really talk to the specifics, but my</p> <p>18 understanding was that the Fed transaction was</p> <p>19 going to mature on the Thursday and they were not</p> <p>20 really providing any financing subsequently.</p> <p>21 Q. Wednesday night into Thursday, do you</p> <p>22 recall the size of the Fed funding being</p> <p>23 approximately \$45 billion?</p> <p>24 A. Yes, that sounds about right.</p> <p>25 Q. And the Fed was holding approximately</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 39</p> <p>2 \$50 billion in collateral against that financing?</p> <p>3 A. That sounds right.</p> <p>4 Q. And the big transaction that you</p> <p>5 described on Thursday effectively had Barclays</p> <p>6 coming in and putting in \$45 billion to pay off</p> <p>7 the Fed repo, correct?</p> <p>8 A. I understood that they were going to be</p> <p>9 putting in 45, that it was going to be</p> <p>10 a 45 billion-dollar transaction, yes.</p> <p>11 Q. And all the collateral that was being</p> <p>12 held by the Fed was then going to be transferred</p> <p>13 to Barclays, correct?</p> <p>14 MR. HUME: Objection, asked and</p> <p>15 answered. He has already explained.</p> <p>16 A. To be honest, I was not close enough to</p> <p>17 the actual transaction that was being booked to</p> <p>18 know exactly where all the collateral was going to</p> <p>19 end up, nor was I close enough to any agreements</p> <p>20 with Barclays or with the Fed as to where all of</p> <p>21 the collateral was going to end up.</p> <p>22 Q. So effectively on Thursday the Fed</p> <p>23 funding goes down to zero, correct?</p> <p>24 A. That is correct.</p> <p>25 Q. And they exit the financing picture at</p>
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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 40</p> <p>2 that point?</p> <p>3 A. That is correct.</p> <p>4 Q. And what you have left is the Barclays</p> <p>5 repo, correct?</p> <p>6 A. That is correct.</p> <p>7 Q. Describe for me what happens with the</p> <p>8 Barclays repo over the next few business dates?</p> <p>9 We are now into Thursday on to Friday the 19th.</p> <p>10 MR. HUME: Again, objection to the form</p> <p>11 of the question and the lack of foundation.</p> <p>12 A. That transaction happened on Thursday.</p> <p>13 That was essentially the last of that transaction</p> <p>14 in the way that I think about it. It was executed</p> <p>15 on Thursday night and settled Thursday night into</p> <p>16 Friday morning and that was the end of that</p> <p>17 transaction. After that it was just a matter of</p> <p>18 that transaction terminating and the collateral</p> <p>19 being rebooked as a purchase by Barclays and as</p> <p>20 a sale by Lehman.</p> <p>21 Q. Do you recall if the Barclays repo was</p> <p>22 terminated on Friday?</p> <p>23 A. I don't.</p> <p>24 Q. The legal documentation for the</p> <p>25 Lehman/Barclays transaction, are you generally</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 41</p> <p>2 familiar with that documentation?</p> <p>3 A. With parts of it.</p> <p>4 Q. What do you understand the operative</p> <p>5 legal documentation to be for that transaction?</p> <p>6 MR. HUME: I am going to object again.</p> <p>7 You are asking -- he said he is not a negotiator.</p> <p>8 You have shown him their documents and you keep</p> <p>9 asking him to speculate about the entire</p> <p>10 transaction. I will counsel the witness not to</p> <p>11 speculate.</p> <p>12 A. I am not a lawyer but I believe that the</p> <p>13 asset purchase agreement is the document that you</p> <p>14 are referring to.</p> <p>15 Q. Is that a document that you -- when is</p> <p>16 the first time you saw the asset purchase</p> <p>17 agreement?</p> <p>18 A. Not until a long time after the</p> <p>19 transaction closed.</p> <p>20 Q. Is it fair to say during the week of the</p> <p>21 15th to the 22nd you did not see the asset</p> <p>22 purchase agreement?</p> <p>23 A. I didn't, no.</p> <p>24 Q. Did you see something called</p> <p>25 a clarification letter?</p>

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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 42	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 43
2	A. Not until long after the close.	2	MR. HUME: Objection, asked and
3	Q. You know what I mean by "clarification	3	answered.
4	letter"?	4	A. No.
5	A. I know what you mean when you say the	5	Q. During the week of September 15, so from
6	clarification letter in relation to this	6	the 15th through the 19th, were you aware of any
7	transaction, yes.	7	mark downs on the Lehman assets on Lehman's own
8	Q. I am sorry, I cut you off. What is your	8	books?
9	understanding of the clarification letter?	9	MR. HUME: Objection, vague and
10	MR. HUME: Objection. Same objection.	10	ambiguous.
11	You are asking someone who was not a negotiator,	11	A. There was a great deal of volatility in
12	who is not a lawyer to speculate as to the meaning	12	prices over that week so I can't really sort of
13	of these documents that you are not even showing	13	answer whether there were any specific mark downs.
14	him.	14	I was not part of the process of re-marking those
15	A. Only that it was a clarification to the	15	books or re-marking the assets, but there was
16	purchase agreement.	16	a great deal of price volatility and so I would
17	Q. Do you know when it was negotiated?	17	certainly expect that there would be asset price
18	A. I believe on the -- prior to closing on	18	movements and I would expect most of them to be
19	the -- I don't remember. Actually, I don't know	19	down.
20	when it was negotiated.	20	Q. Were you aware of a general mark down
21	Q. Did anyone ever tell you why	21	process in connection with Lehman's assets during
22	a clarification letter was needed?	22	that week?
23	A. No.	23	A. No.
24	Q. Did you review any drafts of	24	Q. Going back to Thursday and the closing
25	a clarification letter?	25	out of the Fed facility, and then the Barclays
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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 44	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 45
2	repo, you said the Bank of New York was	2	collateral?
3	a tri-party provider for the Barclays repo, is	3	Q. The Barclays collateral.
4	that right?	4	A. There was certainly a very comprehensive
5	A. That is right.	5	reconciliation required because of the number of
6	Q. So they would have played a similar role	6	securities that were moving, and some of those
7	to the role played by JP Morgan on the Fed	7	securities were quite complicated in terms of not
8	facility, correct?	8	just the valuation but the actual amounts. These
9	A. That is correct.	9	are mortgage securities, mortgage pass throughs,
10	Q. And therefore Bank of New York would	10	so there was a very big reconciliation required
11	have had prepared valuations of the collateral	11	and there were differences identified in the
12	that was being posted on the Barclays repo,	12	details of the securities. There were differences
13	correct?	13	in the valuations and for certain there were
14	A. Correct.	14	differences in the valuations.
15	Q. And they did that, correct?	15	Q. And this reconciliation process that you
16	A. I believe so, yes.	16	just described, when did that take place?
17	Q. Are you familiar generally with the Bank	17	A. I think the reconciliation that I
18	of New York valuations of the collateral posted by	18	remember sort of in detail was after the closing.
19	Lehman?	19	I think we tried to do a reconciliation on the
20	A. Generally, yes.	20	Friday. When I say "we", it was within the
21	Q. Are you aware of any discrepancies	21	operations team, and certainly after the 22nd or
22	between the Bank of New York valuations for the	22	on the 22nd, and after there were more detailed
23	collateral and Lehman valuations of that same	23	reconciliations produced.
24	collateral?	24	Q. When you got to Barclays were you
25	MR. HUME: Objection to form, what	25	involved in dealing with Barclays' accountants in

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<p>1           <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>           46</p> <p>2   <b>accounting for the economics of the acquisition of</b></p> <p>3   <b>Lehman by Barclays?</b></p> <p>4       A. We were asked to contribute to the</p> <p>5   initial balance sheet, the preparation of an</p> <p>6   initial balance sheet, but I would say that my</p> <p>7   involvement with the accountants was as an</p> <p>8   information provider and was sporadic. I was not</p> <p>9   involved in -- after the initial balance sheet,</p> <p>10   components of the initial balance sheet were</p> <p>11   provided, our balance sheet commitment, I don't</p> <p>12   think I did very much in terms of the accounting</p> <p>13   for the transaction.</p> <p>14       <b>Q. In addition to helping with the</b></p> <p>15   <b>preparation of the initial balance sheet, did you</b></p> <p>16   <b>play any role in reviewing the valuation of the</b></p> <p>17   <b>acquisition in connection with the year-end</b></p> <p>18   <b>results for Barclays?</b></p> <p>19       A. I saw the balance sheet, the acquisition</p> <p>20   balance sheet a number of times, and as I say I</p> <p>21   was peripherally involved. The accounting for</p> <p>22   this was quite complicated because of the</p> <p>23   different entities that were involved, and so yes</p> <p>24   I saw some details but the overall economics</p> <p>25   I would say was not really clear to me. I was not</p>	<p>1           <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>           47</p> <p>2   sort of involved at that level.</p> <p>3       <b>Q. You are generally aware that Barclays</b></p> <p>4   <b>has reported a gain on the acquisition, correct?</b></p> <p>5       A. Yes. I mean, I am aware of what was</p> <p>6   publicly disclosed. I have not seen the details</p> <p>7   of the calculation of that.</p> <p>8       <b>Q. What is your general understanding of</b></p> <p>9   <b>the magnitude of the gain reported by Barclays for</b></p> <p>10   <b>the year-end 2008 from the Lehman acquisition?</b></p> <p>11       A. That a gain on acquisition was reported</p> <p>12   of over 2 billion pounds.</p> <p>13       <b>Q. Over 2 billion pounds?</b></p> <p>14       A. Yes.</p> <p>15       <b>Q. Is it your understanding that there may</b></p> <p>16   <b>well be additional gains from the acquisition that</b></p> <p>17   <b>have not yet been reported by Barclays?</b></p> <p>18       MR. HUME: Objection.</p> <p>19       A. I am not aware of that.</p> <p>20       <b>Q. You don't know one way or the other?</b></p> <p>21       A. I don't.</p> <p>22       <b>Q. Did you ever talk to anyone as to why</b></p> <p>23   <b>Barclays was getting a 5 billion-dollar discount</b></p> <p>24   <b>on this transaction?</b></p> <p>25       A. I don't think I did, no.</p>
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<p>1           <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>           48</p> <p>2       <b>Q. You told us that you reviewed the asset</b></p> <p>3   <b>purchase agreement and the clarification letter at</b></p> <p>4   <b>some time after the closing of the transaction?</b></p> <p>5       A. No, I didn't say I reviewed them.</p> <p>6   I said I was shown parts of the asset purchase</p> <p>7   agreement and the clarification letter.</p> <p>8       <b>Q. Even better. Do you recall whether the</b></p> <p>9   <b>asset purchase agreement or the clarification</b></p> <p>10   <b>letter reflect a 5 billion-dollar discount?</b></p> <p>11       MR. HUME: Objection to the form of the</p> <p>12   question. What do you mean "reflect"?</p> <p>13       <b>Q. Do you have my question in mind?</b></p> <p>14       A. Could you repeat it, please?</p> <p>15               (Read back)</p> <p>16       MR. HUME: Again I am going to object to</p> <p>17   the question since you have not shown him the</p> <p>18   agreements, he is not a lawyer and he was not</p> <p>19   a negotiator.</p> <p>20       <b>Q. You were shown parts of the agreements,</b></p> <p>21   <b>right, that is what you said?</b></p> <p>22       A. I just don't know.</p> <p>23       <b>Q. Let me ask you the question. You were</b></p> <p>24   <b>shown parts of these agreements, the asset</b></p> <p>25   <b>purchase agreement and the clarification letter,</b></p>	<p>1           <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>           49</p> <p>2   <b>right?</b></p> <p>3       A. Yes.</p> <p>4       <b>Q. The parts that you were shown, did they</b></p> <p>5   <b>show a 5 billion-dollar discount?</b></p> <p>6       MR. HUME: Do you recall is the</p> <p>7   question.</p> <p>8       A. I don't recall, no.</p> <p>9       <b>Q. What parts of the agreement do you</b></p> <p>10   <b>recall being shown?</b></p> <p>11       A. I don't know. I don't know. I didn't</p> <p>12   see the whole agreement so -- I don't think I saw</p> <p>13   the whole agreement. I saw components of it</p> <p>14   related to the various schedules of assets that</p> <p>15   were being transferred and to some of the other</p> <p>16   assets that were included in the agreement.</p> <p>17       <b>Q. Was there a particular task or event in</b></p> <p>18   <b>connection with which you were shown these pieces</b></p> <p>19   <b>or parts of the transaction documents?</b></p> <p>20       A. Yes, in the preparation I would say of</p> <p>21   revisions to Schedule B to the agreement and in</p> <p>22   the analysis of the 15c3 receivables,</p> <p>23       <b>Q. And what role did you play in connection</b></p> <p>24   <b>with the revisions to Schedule B?</b></p> <p>25       A. Providing some analytical support to the</p>

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 50</p> <p>2 determination of available collateral.</p> <p>3 Q. Does that mean you determined what</p> <p>4 collateral was available to be included in</p> <p>5 Schedule B?</p> <p>6 A. No.</p> <p>7 Q. What do you mean by "analytical</p> <p>8 support"?</p> <p>9 A. It means that I helped coordinate the</p> <p>10 process of reviewing collateral that may be</p> <p>11 available that was being extracted from various</p> <p>12 systems that you would typically use, whether it</p> <p>13 was the operations systems or some of the</p> <p>14 databases which aggregate that information and</p> <p>15 provide a different cut of analysis. So my work,</p> <p>16 my involvement, was in reviewing that to ensure</p> <p>17 that it was being appropriately queried and</p> <p>18 analyzed and understood, validated.</p> <p>19 Q. Who else was involved in this process?</p> <p>20 A. The operations team were really the</p> <p>21 experts in the operating systems and therefore in</p> <p>22 understanding the availability of collateral.</p> <p>23 Q. Who was the operations team?</p> <p>24 A. Alastair --</p> <p>25 Q. Who was the operations team doing this?</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 51</p> <p>2 A. Alastair Blackwell manages that team.</p> <p>3 I would say that Jim Hraske was the person most</p> <p>4 involved.</p> <p>5 Q. And this event that you are describe,</p> <p>6 the revisions to Schedule B, this is post-closing,</p> <p>7 correct?</p> <p>8 A. That is correct.</p> <p>9 Q. And in the weeks immediately after the</p> <p>10 closing of the transaction?</p> <p>11 A. Pre-closing there was an analysis</p> <p>12 performed to determine the unencumbered</p> <p>13 collateral, as I am sure you are aware, which was</p> <p>14 the basis for the original Schedule B. The</p> <p>15 subsequent analysis I would say was to correct for</p> <p>16 errors that may have been made in the initial</p> <p>17 aggregation of information in the initial</p> <p>18 analysis, and to reflect some of the breaks in the</p> <p>19 different systems that were used, stock record</p> <p>20 breaks for example. That exercise continued</p> <p>21 sporadically through the remaining three months of</p> <p>22 2008.</p> <p>23 Q. Again, just talking about the revisions</p> <p>24 to Schedule B, I want to talk about the</p> <p>25 post-closing revisions to Schedule B. The errors</p>
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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 52</p> <p>2 you are talking about, is it errors about</p> <p>3 identifying particular pieces of collateral? Is</p> <p>4 that the nature?</p> <p>5 A. That is correct.</p> <p>6 Q. When you said "stock record breaks",</p> <p>7 what do you mean by "stock record breaks"?</p> <p>8 A. These are breaks between the internal</p> <p>9 accounting records and the external depository</p> <p>10 statements.</p> <p>11 Q. In terms of ownership of particular</p> <p>12 securities, is that what you mean?</p> <p>13 A. In terms of possession.</p> <p>14 Q. Did these revisions to Schedule B that</p> <p>15 took place post-close affect the value of the</p> <p>16 collateral that was listed on Schedule B, the</p> <p>17 total value?</p> <p>18 MR. HUME: Objection. The revisions to</p> <p>19 Schedule B are being referred to -- I believe the</p> <p>20 record is unclear whether you mean revisions to</p> <p>21 the schedule filed a week after the closing or any</p> <p>22 subsequent work after that. For the line of</p> <p>23 questioning to be clear that needs to be made</p> <p>24 clear in the questions.</p> <p>25 MR. TAMBE: I am talking about the</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 53</p> <p>2 revisions to Schedule B that you talked about,</p> <p>3 Mr. Tonucci.</p> <p>4 MR. HUME: There have been a number of</p> <p>5 answers that he has provided so I still think the</p> <p>6 question is unclear.</p> <p>7 MR. TAMBE: So the revisions to Schedule</p> <p>8 B that you were talking about, did those revisions</p> <p>9 affect the total value of the Schedule B?</p> <p>10 A. I am referring to the revisions that</p> <p>11 happened in the period after the initial filing of</p> <p>12 Schedule B and I am not sure when and if the --</p> <p>13 you know, when and if revisions were actually</p> <p>14 lodged with the court. I am not a lawyer and I am</p> <p>15 not sure what the legal process was but certainly</p> <p>16 the internal calculations of unencumbered</p> <p>17 collateral is what I am referring to as the</p> <p>18 revisions to Schedule B that happened essentially</p> <p>19 after the initial filing of Schedule B in</p> <p>20 late September, and those revisions changed the</p> <p>21 collateral detail significantly. So the values</p> <p>22 clearly changed along with the composition of the</p> <p>23 assets.</p> <p>24 Q. Did they change up, increasing value, or</p> <p>25 did they change down?</p>

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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 54	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 55
2	A. I believe they changed in both	2	Barclays?
3	directions.	3	A. I do.
4	Q. As an aggregate?	4	Q. What can you tell us about the efforts
5	A. I don't know.	5	to find additional collateral for Barclays?
6	Q. Do you have an understanding as to the	6	A. That we were asked on the morning of the
7	origination of Schedule B?	7	19th to find if there was additional collateral to
8	A. I do.	8	include in the transaction.
9	Q. What is your understanding about the	9	Q. Asked by whom?
10	origination of Schedule B?	10	A. I believe I was asked by Ian Lowitt.
11	A. The origination of Schedule B was to	11	Q. Did Ian Lowitt tell you why he was
12	list the unencumbered collateral that was to be	12	asking you to find additional collateral?
13	included within the sale and purchase agreement.	13	A. He said that it was necessary for the
14	Q. So this was unencumbered collateral	14	transaction to close and he reiterated that
15	other than the collateral that had already been	15	through the day.
16	posted to Barclays under the Barclays repo,	16	Q. In addition to Schedule B, were there
17	correct?	17	other collections of assets that were put together
18	A. That is correct.	18	to provide additional collateral to Barclays?
19	Q. And is it your recollection that the	19	A. There were receivables in the form of
20	origination of Schedule B goes back to Friday,	20	the 15c3 reserve, which were reviewed, and through
21	19 September?	21	the course of the Friday there were other
22	MR. HUME: Objection, lacks foundation.	22	receivables that were also reviewed to determine
23	A. That is correct.	23	if they could be included as assets or collateral
24	Q. And do you recall there being an effort	24	in the sales agreement.
25	on September 19 to find additional collateral for	25	Q. What other receivables?
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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 56	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 57
2	A. We reviewed derivative receivables and	2	A. I would say we identified the 15c3
3	margin balances, FX receivables, that is foreign	3	receivables as an asset that could be transferred.
4	exchange. I should add actually we also reviewed	4	Q. Who is the "we" who identified those
5	some bank receivables, because there had been cash	5	receivables?
6	posted with some of the clearing banks, so that	6	A. It was again overseen by Ian but it was
7	was also reviewed.	7	myself, Martin Kelly, Robert Azerad.
8	Q. Safe to say you looked in every corner	8	Q. What was approximately the value of the
9	for assets and receivables that you could deliver	9	15c3 receivables that you identified?
10	to Barclays?	10	A. There was uncertainty, a great deal of
11	MR. HUME: Objection, vague and	11	uncertainty about the excess, but there was
12	ambiguous.	12	certainty about the actual deposits that had been
13	A. We reviewed the balance sheet to see	13	made for 15c3, which included a cash deposit with
14	where there might be additional assets.	14	Wells Fargo for a billion dollars and securities
15	Q. You looked everywhere, right?	15	which in the calculation had been valued at, I
16	A. We looked across the whole balance	16	believe, \$769 million.
17	sheet.	17	Q. And so that is about what, \$1.7 billion
18	Q. And this was a directive from Mr. Lowitt	18	total?
19	to find these assets, correct?	19	A. That is correct. There may have been
20	A. That is correct.	20	other balances. I think that there were other
21	Q. And you found a bunch of unencumbered	21	securities balances also that were on deposit but
22	assets and put them in Schedule B?	22	I recall specifically those two.
23	A. That is correct.	23	Q. On the Friday the 19th, is it your
24	Q. And then you found these 15c3	24	recollection that the 15c3 receivables were
25	receivables, is that right?	25	identified as assets or receivables that in fact

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<p>1           <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>           58</p> <p>2       <b>could be transferred to Barclays?</b></p> <p>3           MR. HUME: Objection to the lack of</p> <p>4       foundation.</p> <p>5           A. That is correct, that is my</p> <p>6       understanding.</p> <p>7           <b>Q. From your earlier answer it seems that</b></p> <p>8       <b>there were receivables that you identified that</b></p> <p>9       <b>maybe you concluded could not be transferred to</b></p> <p>10       <b>Barclays, is that fair?</b></p> <p>11          A. That is correct.</p> <p>12          <b>Q. The 15c3's could be transferred to</b></p> <p>13       <b>Barclays, right?</b></p> <p>14          MR. HUME: Objection to the vagueness of</p> <p>15       the question. What do you mean by "could"?</p> <p>16          A. I mean, I would try and clarify this --</p> <p>17          <b>Q. Sure,</b></p> <p>18          A. The thinking was that there was</p> <p>19       a surplus, in that calculation that although it</p> <p>20       was uncertain as to both the amount of the surplus</p> <p>21       and the requirement, these represented assets</p> <p>22       which were transferable and, you know,</p> <p>23       identifiable and transferable. I would say that</p> <p>24       the distinction with some of the other receivables</p> <p>25       was that it was much more difficult, given our</p>	<p>1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           59</p> <p>2       information, our sort of accounting position at</p> <p>3       that time, our transactional detail at that time,</p> <p>4       it was much more difficult to identify specific</p> <p>5       receivables that could have been transferred. So</p> <p>6       it was more a matter of that these were much more</p> <p>7       easily identifiable, but yes, we did believe that</p> <p>8       they were transferable, or would become</p> <p>9       transferable. It was always understood that there</p> <p>10       was a regulatory approval that would be required</p> <p>11       but that they would become transferable.</p> <p>12          <b>Q. Did you have any discussions with</b></p> <p>13       <b>Mr. Lowitt as to whether transferring those</b></p> <p>14       <b>receivables was part of the deal with Barclays?</b></p> <p>15          MR. HUME: Objection, what receivables?</p> <p>16          <b>Q. The 15c3 receivables?</b></p> <p>17          A. I do recall talking to him about that,</p> <p>18       yes.</p> <p>19          <b>Q. What did he tell you?</b></p> <p>20          A. We were looking for potential other</p> <p>21       assets and so we were going to include this in the</p> <p>22       agreement.</p> <p>23          <b>Q. Do you know one way or the other whether</b></p> <p>24       <b>the 15c3 receivables were part of the asset</b></p> <p>25       <b>purchase agreement?</b></p>
Page 60	Page 61
<p>1           <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>           60</p> <p>2       A. I can't recall if they were part of the</p> <p>3       asset purchase agreement or some clarification</p> <p>4       letter.</p> <p>5          <b>Q. The parts of the asset purchase</b></p> <p>6       <b>agreement or the clarification letter that were</b></p> <p>7       <b>shown to you, do you recall whether they had any</b></p> <p>8       <b>reference to the 15c3 assets?</b></p> <p>9          A. I don't recall. I don't recall which.</p> <p>10       I do recall that there was in one or other of</p> <p>11       those documents a reference to that, to those</p> <p>12       assets.</p> <p>13          <b>Q. The other receivables you mentioned, the</b></p> <p>14       <b>derivatives receivables, could you describe what</b></p> <p>15       <b>you mean by derivative receivables?</b></p> <p>16          A. Yes. Particularly for LBI there were</p> <p>17       substantial margins posted at the exchanges, which</p> <p>18       were accounted for, essentially accounted for as</p> <p>19       receivables, and those are what I refer to as</p> <p>20       derivative receivables.</p> <p>21          <b>Q. Would an example of derivative</b></p> <p>22       <b>receivables be these types of receivables that</b></p> <p>23       <b>were posted with the OCC?</b></p> <p>24          MR. HUME: Objection to the form of the</p> <p>25       question. These type? Which type of receivables?</p>	<p>1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           61</p> <p>2          <b>Q. Derivative receivables?</b></p> <p>3          A. I would say that would be consistent</p> <p>4       with my understanding.</p> <p>5          <b>Q. And the OCC is the Options Clearing</b></p> <p>6       <b>Corp?</b></p> <p>7          A. That is correct.</p> <p>8          <b>Q. Do you recall in the bits and pieces of</b></p> <p>9       <b>the asset purchase agreement, the APA and the</b></p> <p>10       <b>clarification letter that was shown to you whether</b></p> <p>11       <b>those documents provided for derivatives</b></p> <p>12       <b>receivables to be transferred to Barclays?</b></p> <p>13          MR. HUME: Objection. You are asking</p> <p>14       this witness to give an opinion on a legal</p> <p>15       document that you have not shown him. He is not</p> <p>16       a lawyer and he said he was not a negotiator of</p> <p>17       the deal.</p> <p>18          MR. TAMBE: You have an objection to</p> <p>19       foundation and form.</p> <p>20          MR. HUME: I am not just objecting to</p> <p>21       foundation. It is an inappropriate, misleading</p> <p>22       question.</p> <p>23          MR. TAMBE: Don't make speaking</p> <p>24       objections. Object to form, move on, we will get</p> <p>25       through this faster.</p>



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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 62	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 63
2	MR. HUME: It is not just an objection	2	A. There was insufficient detail to be able
3	to form.	3	to confirm that, that that still existed at that
4	MR. TAMBE: Are you instructing him not	4	point in time.
5	to answer?	5	<b>Q. At some subsequent point in time was</b>
6	MR. HUME: I am objecting to	6	<b>a determination made as to those FX receivables?</b>
7	a misleading line of questioning.	7	A. I don't know.
8	MR. TAMBE: Thank you.	8	<b>Q. Another category of receivables you</b>
9	Mr. Tonucci, do you have my question in	9	<b>identified were bank receivables?</b>
10	mind?	10	A. Yes.
11	(Read back)	11	<b>Q. Again, the same series of questions on</b>
12	A. I don't recall.	12	<b>the bank receivables; was a determination made on</b>
13	<b>Q. Another type of receivable you described</b>	13	<b>the 19th that those were transferable to Barclays?</b>
14	<b>before were FX receivables?</b>	14	A. On the 19th there was a determination
15	A. Um hum.	15	made that it was too complicated and too uncertain
16	<b>Q. Did you identify any foreign exchange</b>	16	to be able to say whether those were transferable.
17	<b>receivables that could be transferred to Barclays?</b>	17	<b>Q. And on some subsequent date after the</b>
18	A. There was a receivable balance for	18	<b>19th was a determination made as to whether those</b>
19	forward settling foreign exchange on the LBI	19	<b>could be transferred?</b>
20	balance sheet.	20	A. I don't know.
21	<b>Q. And the determination was that those</b>	21	<b>Q. You were in New York during this week,</b>
22	<b>receivables could be transferred to Barclays, is</b>	22	<b>correct?</b>
23	<b>that right?</b>	23	A. That is correct.
24	MR. HUME: Objection to the form,	24	<b>Q. Do you recall accepting your offer of</b>
25	objection to the vagueness of the word --	25	<b>employment at Barclays?</b>
Page 64		Page 65	
1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 64	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 65
2	A. I do.	2	<b>Q. You were accepting an offer of</b>
3	<b>Q. When did you do that?</b>	3	<b>employment for Barclays, right?</b>
4	A. I believe it was 26 September.	4	A. Yes.
5	<b>Q. You sent an e-mail on the morning of the</b>	5	<b>Q. What offer were you accepting on</b>
6	<b>22nd accepting your offer, right?</b>	6	<b>Monday September 22 at 1:04 pm GMT?</b>
7	MR. HUME: Objection, lacks foundation.	7	A. I can't recall the details at that point
8	A. I can't remember.	8	but I believe that the offers went out over the
9	<b>Q. Do you recall about an hour after the</b>	9	<b>weekend, but I don't recall the exact details of</b>
10	<b>ink dried on the clarification letter you sent an</b>	10	<b>it at that point. I recall the hard copy in more</b>
11	<b>e-mail?</b>	11	<b>detail. I am not too sure when that was sent out.</b>
12	MR. HUME: Objection to form.	12	<b>Q. If I understand your answer, at some</b>
13	A. I don't remember.	13	<b>point over the weekend of the 20th/21st you</b>
14	<b>Q. Let me show it to you.</b>	14	<b>received a soft copy of the offer?</b>
15	<b>(Exhibit 137A marked for identification)</b>	15	A. Yes.
16	<b>I have handed you a one page document</b>	16	<b>Q. And at some point during the week of the</b>
17	<b>marked Exhibit 137A. Do you have that before you?</b>	17	<b>22nd you actually signed a hard copy?</b>
18	A. I do.	18	A. That is correct.
19	<b>Q. Do you recognize this as an e-mail that</b>	19	<b>Q. But you knew before the 20th that you</b>
20	<b>you sent to an e-mail box called "Accept Barclays</b>	20	<b>would be offered employment by Barclays, correct?</b>
21	<b>offer at Lehman.com"?</b>	21	MR. HUME: Objection.
22	A. Yes.	22	A. I knew on the evening of the 19th that
23	<b>Q. And the subject simply says: "I accept".</b>	23	<b>I would receive an offer from Barclays.</b>
24	<b>Correct?</b>	24	<b>Q. Had you had any discussions with anyone</b>
25	A. Yes.	25	<b>prior to September 19 about receiving an offer</b>

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<p>1           <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>           66</p> <p>2   <b>from Barclays?</b></p> <p>3       A. No.</p> <p>4       <b>Q. What was the communication you received</b></p> <p>5 <b>on the evening of September 19 about an offer from</b></p> <p>6 <b>Barclays?</b></p> <p>7       A. After the Lehman and the Barclays and</p> <p>8 the other teams had gone to the bankruptcy court,</p> <p>9 after the day's work had been completed and I was</p> <p>10 going to head home, and I had been up all night so</p> <p>11 I was exhausted, and so I am not too sure, I am</p> <p>12 not too sure of the exact time, before departing</p> <p>13 for the day Ian Lowitt advised me that I would</p> <p>14 receive an offer, and he gave me the general terms</p> <p>15 that I would likely be offered.</p> <p>16       <b>Q. When you say "the general terms", the</b></p> <p>17 <b>general economic terms of the offer?</b></p> <p>18       A. The general economic terms, but I was</p> <p>19 not sure of the position at that point.</p> <p>20       <b>Q. Prior to that September 19, had you had</b></p> <p>21 <b>discussions with Ian about what your future held</b></p> <p>22 <b>for you?</b></p> <p>23       A. No.</p> <p>24       <b>Q. No discussions?</b></p> <p>25       A. No.</p>	<p>1           <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>           67</p> <p>2       <b>Q. Did you try to get any assurance from</b></p> <p>3 <b>him or anyone else about whether there was a place</b></p> <p>4 <b>for you at Barclays?</b></p> <p>5       A. No.</p> <p>6       <b>Q. You knew he would be heading to</b></p> <p>7 <b>Barclays, right?</b></p> <p>8       A. I didn't, no.</p> <p>9       <b>Q. Did you know whether any of the folks</b></p> <p>10 <b>that you were working with at Lehman that week</b></p> <p>11 <b>were going to be headed to Barclays?</b></p> <p>12       A. I expected that there would be some that</p> <p>13 were heading to Barclays but I was not sure of</p> <p>14 exactly whom.</p> <p>15       <b>Q. Barclays was buying the North American</b></p> <p>16 <b>operations, correct?</b></p> <p>17       A. Correct.</p> <p>18       <b>Q. And they needed people to run those</b></p> <p>19 <b>operations?</b></p> <p>20       A. Correct.</p> <p>21       <b>Q. So your expectation was that some</b></p> <p>22 <b>significant number of Lehman folks would in fact</b></p> <p>23 <b>get offers from Barclays?</b></p> <p>24       A. That is correct.</p> <p>25       <b>Q. And you certainly hoped to be included</b></p>
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<p>1           <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>           68</p> <p>2   <b>in that group?</b></p> <p>3       A. Yes, I think it is fair to say I hoped</p> <p>4 to be included.</p> <p>5       <b>Q. Your compensation at Lehman for the</b></p> <p>6 <b>calendar year 2007, the full calendar year, could</b></p> <p>7 <b>you briefly describe what your total Lehman</b></p> <p>8 <b>compensation was?</b></p> <p>9       A. I was on an ex-pat arrangement, so I</p> <p>10 will leave that aside. The basic components of</p> <p>11 compensation, total compensation of \$2 million.</p> <p>12       <b>Q. And was that broken out into cash and</b></p> <p>13 <b>non-cash?</b></p> <p>14       A. Yes. Salary was around -- I think it</p> <p>15 was \$250,000. The cash was around, I would say</p> <p>16 around a million dollars total cash, cash bonus</p> <p>17 and then stock was the remainder.</p> <p>18       <b>Q. And the stock component that you</b></p> <p>19 <b>received, your 2007 compensation, that was</b></p> <p>20 <b>immediately vested stock?</b></p> <p>21       A. No, that vested in the regular schedule,</p> <p>22 which is 5 years for Lehman.</p> <p>23       (Exhibit 138A marked for identification)</p> <p>24       <b>Q. Sir, I have placed before you a 3-page</b></p> <p>25 <b>document marked exhibit 138A. Is that a copy of</b></p>	<p>1           <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>           69</p> <p>2   <b>the offer of employment you received from Barclays</b></p> <p>3 <b>Capital over the weekend of September 20/21?</b></p> <p>4       A. Yes.</p> <p>5       <b>Q. It carries a date of September 22 on the</b></p> <p>6 <b>first page, right?</b></p> <p>7       A. Correct.</p> <p>8       <b>Q. And that is your signature on the last</b></p> <p>9 <b>page?</b></p> <p>10       A. That is correct.</p> <p>11       <b>Q. Looking at the first page of</b></p> <p>12 <b>Exhibit 138A, the economic terms of your</b></p> <p>13 <b>employment are as set forth up there, correct?</b></p> <p>14       A. That is correct.</p> <p>15       <b>Q. You have a compensation of 268,336 per</b></p> <p>16 <b>annum?</b></p> <p>17       A. That is right.</p> <p>18       <b>Q. There is a guaranteed cash bonus for</b></p> <p>19 <b>2008, do you see that?</b></p> <p>20       A. I do.</p> <p>21       <b>Q. That is in the amount of 1.185 million?</b></p> <p>22       A. Correct.</p> <p>23       MR. HUME: Sorry, I am unsure. We are</p> <p>24 going to designate obviously any portion of the</p> <p>25 transcript that relates to compensation highly</p>



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<p>1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           70</p> <p>2       confidential. Is it understood we can do that</p> <p>3       after the deposition?</p> <p>4           MR. TAMBE: Yes, and I think the</p> <p>5       agreement that was reached at the Felder</p> <p>6       deposition we assume carries for all depositions.</p> <p>7           MR. HUME: For all designations we can</p> <p>8       do it later rather than during.</p> <p>9           MR. TAMBE: You can do it later. Let's</p> <p>10       just follow the Felder rule. I think it was that</p> <p>11       we were going to treat the entire transcript as</p> <p>12       highly confidential.</p> <p>13           MR. MAGUIRE: Treating the entire</p> <p>14       transcript as highly confidential for a week and</p> <p>15       make the designations within the week.</p> <p>16           MR. TAMBE: Going back to the</p> <p>17       guaranteed cash bonus of 1.185 million, did you</p> <p>18       receive that in February 2009?</p> <p>19           A. I am not sure if it was February</p> <p>20       or March but it was received in 2009.</p> <p>21           Q. And was that the amount of the cash</p> <p>22       bonus you received in February or March 2009?</p> <p>23           A. That is correct.</p> <p>24           Q. Did you also receive the next item, the</p> <p>25       2008 EPP recommendation. Do you see that?</p>	<p>1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           71</p> <p>2           A. I do.</p> <p>3           Q. And did you?</p> <p>4           A. I did.</p> <p>5           Q. Was it roughly that amount?</p> <p>6           A. Yes.</p> <p>7           Q. The next category, "special cash award",</p> <p>8       do you see that?</p> <p>9           A. Yes.</p> <p>10          Q. That is a special cash award of 700,000,</p> <p>11       do you see that?</p> <p>12          A. That is right, yes.</p> <p>13          Q. Do you have an understanding as to why</p> <p>14       you were receiving a special cash award?</p> <p>15          A. I assumed that it was -- I assumed that</p> <p>16       it was being awarded to a group of senior</p> <p>17       employees that Barclays felt were going to be of</p> <p>18       future value to the organization.</p> <p>19          Q. Have you received any portion of the</p> <p>20       special cash award as of today?</p> <p>21          A. No.</p> <p>22          Q. You had a change in position you said</p> <p>23       early on in February or March 09?</p> <p>24          A. That is right.</p> <p>25          Q. Has your compensation increased as</p>
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<p>1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           72</p> <p>2       a result of that change in position?</p> <p>3           A. My basic salary I would say is</p> <p>4       consistent and I am not sure of my bonus.</p> <p>5           Q. Do you have any guaranteed cash bonus</p> <p>6       component in your new position?</p> <p>7           A. No.</p> <p>8           Q. Do you have any guaranteed EPP?</p> <p>9           A. No.</p> <p>10          Q. Any special cash awards?</p> <p>11          A. No.</p> <p>12          (Exhibit 139A marked for identification).</p> <p>13          Q. I have placed before you a 2-page</p> <p>14       document marked Exhibit 139A. Let me know when</p> <p>15       you have had a chance to review it.</p> <p>16          A. I have reviewed it, yes.</p> <p>17          Q. A couple of questions about some of the</p> <p>18       names that appear on this e-mail chain. Some you</p> <p>19       have mentioned this morning but a couple of others</p> <p>20       I want to ask you about. David Aronow, what</p> <p>21       position did Mr. Aronow have?</p> <p>22          A. He is within the operations team.</p> <p>23          Q. At Lehman?</p> <p>24          A. At Lehman.</p> <p>25          Q. And he made the move to Barclays as</p>	<p>1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           73</p> <p>2       well?</p> <p>3           A. Yes.</p> <p>4           Q. John Palchynsky, what position did he</p> <p>5       have at Lehman?</p> <p>6          A. He was in the operations team.</p> <p>7           Q. Did he make the move to Barclays?</p> <p>8          A. Yes.</p> <p>9           Q. John Feraca. Was he in the operations</p> <p>10       team at Lehman as well?</p> <p>11          A. He was in the prime services team.</p> <p>12          Q. Did he make the move to Barclays?</p> <p>13          A. Yes.</p> <p>14          Q. Monty Forrest, what was his position at</p> <p>15       Lehman?</p> <p>16          A. He was in the prime services team.</p> <p>17          Q. Did he make the move to Barclays?</p> <p>18          A. He did.</p> <p>19          Q. Neil Ullman, what was his position at</p> <p>20       Lehman?</p> <p>21          A. He was in the operations team.</p> <p>22          Q. Did he make the move to Barclays?</p> <p>23          A. He did.</p> <p>24          Q. Dan Fleming, you have mentioned before.</p> <p>25       Did he make the move to Barclays?</p>

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<p>1           <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>           74</p> <p>2       A. He did.</p> <p>3       <b>Q. Just a question about the e-mail address</b></p> <p>4 <b>for Mr. Fleming. It has in parentheses "TSY"</b></p> <p>5 <b>after it. Do you see that?</b></p> <p>6       A. Yes.</p> <p>7       <b>Q. Any understanding what that means?</b></p> <p>8       A. Treasury.</p> <p>9       <b>Q. And that was a designation used within</b></p> <p>10 <b>Lehman?</b></p> <p>11       A. I don't know. I think that the TSY</p> <p>12 designation is used where there may be more than</p> <p>13 one person, just to identify which one it is.</p> <p>14       <b>Q. Craig Jones, what was his position</b></p> <p>15 <b>within Lehman?</b></p> <p>16       A. He was in treasury.</p> <p>17       <b>Q. Did he make it over to Barclays?</b></p> <p>18       A. He did.</p> <p>19       <b>Q. Look at the top half of Exhibit 139A.</b></p> <p>20 <b>There is a message there from Mr. Palchynsky to</b></p> <p>21 <b>several people, including you. Do you see that?</b></p> <p>22       A. I do.</p> <p>23       <b>Q. He says in there: "Anyway, see you all</b></p> <p>24 <b>at BarCap". Do you see that?</b></p> <p>25       A. I do.</p>	<p>1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           75</p> <p>2       <b>Q. There is an e-mail dated September 19,</b></p> <p>3 <b>2008. Do you see that?</b></p> <p>4       A. I do.</p> <p>5       <b>Q. Around 6:28 pm, right?</b></p> <p>6       A. Yes.</p> <p>7       <b>Q. So was this the first that you had heard</b></p> <p>8 <b>about your employment at Barclays?</b></p> <p>9       A. I believe that I had heard perhaps an</p> <p>10 hour before that.</p> <p>11       <b>Q. Was this the first that you had heard</b></p> <p>12 <b>that all these other people were also going to be</b></p> <p>13 <b>going to Barclays?</b></p> <p>14       A. This is a relatively junior person in an</p> <p>15 operations area, who could have been speculating.</p> <p>16 It was not clear to me that all of these people</p> <p>17 were going to be moving over.</p> <p>18       <b>Q. This chain of e-mails has a subject line</b></p> <p>19 <b>that says: "Urgent, tri unwind". Do you see that?</b></p> <p>20       A. I do.</p> <p>21       <b>Q. And what was the "Urgent tri unwind"</b></p> <p>22 <b>about, if you recall?</b></p> <p>23       A. It was to do with the cash balance that</p> <p>24 was placed with JP Morgan on the night by Barclays</p> <p>25 on the night of the 18th, and was part of the</p>
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<p>1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           76</p> <p>2 tri-party arrangement, and it was being unwound.</p> <p>3       <b>Q. And the collection of people on these</b></p> <p>4 <b>e-mails were involved in assisting with that</b></p> <p>5 <b>unwind?</b></p> <p>6       A. They were involved in the repo</p> <p>7 operations.</p> <p>8       <b>Q. So they would have dealt with that</b></p> <p>9 <b>unwind and other aspects of the repo?</b></p> <p>10       A. Yes.</p> <p>11       MR. TAMBE: Thank you. We will take</p> <p>12 a short break now.</p> <p>13       (Break from 8:55 to 9:14 am.).</p> <p>14       <b>Q. I am showing you a document previously</b></p> <p>15 <b>marked as Exhibit 19. Have you seen this document</b></p> <p>16 <b>before today, sir?</b></p> <p>17       A. I have.</p> <p>18       <b>Q. What do you understand it to be?</b></p> <p>19       MR. HUME: Objection to the form.</p> <p>20       A. It was the balance sheet that was I</p> <p>21 believe, you know, part of the negotiation for the</p> <p>22 sale to Barclays, so the estimated balance sheet.</p> <p>23       <b>Q. And the estimated balance sheet for what</b></p> <p>24 <b>entity?</b></p> <p>25       A. For the part of LBI that was being sold.</p>	<p>1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           77</p> <p>2       <b>Q. Do you recall if this is a document that</b></p> <p>3 <b>you saw during that week, the week</b></p> <p>4 <b>of September 15, 2008?</b></p> <p>5       A. Yes, I believe I saw it on the 16th.</p> <p>6       <b>Q. Do you know in connection with what</b></p> <p>7 <b>event or action did you see this document?</b></p> <p>8       A. In relation to the Barclays contemplated</p> <p>9 purchase.</p> <p>10       <b>Q. Who showed it to you?</b></p> <p>11       A. I think it was Ian Lowitt.</p> <p>12       <b>Q. Did you play any role in the preparation</b></p> <p>13 <b>of this document, Exhibit 19?</b></p> <p>14       A. I did not.</p> <p>15       <b>Q. We had earlier talked about the</b></p> <p>16 <b>\$5 billion discount. Do you know if the</b></p> <p>17 <b>\$5 billion discount was reflected in this</b></p> <p>18 <b>document, Exhibit 19?</b></p> <p>19       MR. HUME: Objection, lacks foundation.</p> <p>20       A. I do not know.</p> <p>21       <b>Q. If you look under the "liabilities"</b></p> <p>22 <b>column, last two entries above the total are</b></p> <p>23 <b>titled "Cure PMT" and "Comp". Do you see that?</b></p> <p>24       A. I do.</p> <p>25       <b>Q. And there is a total of about four and</b></p>

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<p>1           <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>           86</p> <p>2           A. No.</p> <p>3           <b>Q. Any idea what that means?</b></p> <p>4           MR. HUME: Objection, calls for</p> <p>5 speculation.</p> <p>6           A. No, not really.</p> <p>7           MR. HUME: He is asking you to</p> <p>8 speculate.</p> <p>9           <b>Q. Just in broad dollar terms, was it your</b></p> <p>10 <b>understanding that the amount of the Fed facility</b></p> <p>11 <b>on or about September 18, 2008, was a funding of</b></p> <p>12 <b>about \$44 billion or \$45 billion against a market</b></p> <p>13 <b>value of collateral of about \$50 billion?</b></p> <p>14           A. Yes, that sounds right.</p> <p>15           (Exhibit 140A marked for identification)</p> <p>16           <b>Q. I have had placed before you a document</b></p> <p>17 <b>marked Exhibit 140A, a 3-page document. Take</b></p> <p>18 <b>a moment to look at it, let me know when you are</b></p> <p>19 <b>done. You done?</b></p> <p>20           A. I have read through it.</p> <p>21           <b>Q. Do you recognize that document?</b></p> <p>22           A. Actually, I can't recall going through</p> <p>23 this, no.</p> <p>24           <b>Q. Do you see the cover e-mail is an e-mail</b></p> <p>25 <b>from Mr. Robert Azerad?</b></p>	<p>1           <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>           87</p> <p>2           A. Yes.</p> <p>3           <b>Q. Martin Kelly?</b></p> <p>4           A. Yes.</p> <p>5           <b>Q. You are shown as a cc on that?</b></p> <p>6           A. Yes.</p> <p>7           <b>Q. Do you understand the information that</b></p> <p>8 <b>is contained on page 2 of Exhibit 140A?</b></p> <p>9           A. Not entirely sure I do.</p> <p>10           <b>Q. Do you recall there being a discussion</b></p> <p>11 <b>or an analysis during that week of September 15</b></p> <p>12 <b>about assets available to be transferred by LBI to</b></p> <p>13 <b>Barclays?</b></p> <p>14           A. I do, yes.</p> <p>15           <b>Q. What do you recall about that analysis</b></p> <p>16 <b>or discussion?</b></p> <p>17           A. That obviously we were trying to be as</p> <p>18 specific as possible about not just the assets</p> <p>19 that were on the balance sheet but actually what</p> <p>20 was going to be available for transfer. The</p> <p>21 difference between the balance sheet from a sort</p> <p>22 of accounting or GAPP perspective from a funding</p> <p>23 perspective, was really one of granularity, in</p> <p>24 terms of what has settled and exactly where the</p> <p>25 securities are that are in the repo agreements or</p>
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<p>1           <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>           88</p> <p>2 reverse repo agreements. So the effort was to try</p> <p>3 and establish what was exactly available for</p> <p>4 transfer.</p> <p>5           <b>Q. Is it your understanding that the assets</b></p> <p>6 <b>that were listed on the LBI balance sheet, not all</b></p> <p>7 <b>of those ultimately were transferable to Barclays?</b></p> <p>8           A. Yes.</p> <p>9           <b>Q. We had seen earlier in Exhibit 19, which</b></p> <p>10 <b>I think is still before you, if you can just turn</b></p> <p>11 <b>to that --</b></p> <p>12           A. Yes.</p> <p>13           <b>Q. This is a balance sheet I think you told</b></p> <p>14 <b>us of LBI as of September 16, 2008, correct?</b></p> <p>15           A. Yes 15th, I think, I assume.</p> <p>16           <b>Q. And that has a total adjusted assets or</b></p> <p>17 <b>adjusted total assets of 72.6 billion. Do you see</b></p> <p>18 <b>that?</b></p> <p>19           MR. HUME: Objection. Did you ask</p> <p>20 whether this Exhibit 19 was a balance sheet for</p> <p>21 LBI.</p> <p>22           MR. TAMBE: Yes?</p> <p>23           MR. HUME: Was that the question?</p> <p>24           MR. TAMBE: That was not the question,</p> <p>25 no. The question was whether it as had a total</p>	<p>1           <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>           89</p> <p>2 adjusted assets of 72.6 billion.</p> <p>3           MR. HUME: Before you asked if it was</p> <p>4 a balance sheet of LBI.</p> <p>5           MR. TAMBE: The record is what it is.</p> <p>6 You have an objection to make, make it, let's move</p> <p>7 on.</p> <p>8           MR. HUME: I think the record is</p> <p>9 misleading now. You asked a question that the</p> <p>10 witness did not understand.</p> <p>11           MR. TAMBE: Unless you are challenging</p> <p>12 the witness I am not sure what that objection is</p> <p>13 all about.</p> <p>14           Let's go back to the Exhibit 19, LBI</p> <p>15 balance sheet adjusted total assets 72.65 billion.</p> <p>16 Correct.</p> <p>17           A. I can see that, yes.</p> <p>18           <b>Q. And is it your recollection that over</b></p> <p>19 <b>some -- over the course of that week, the week</b></p> <p>20 <b>of September 15, the assets of LBI available for</b></p> <p>21 <b>transfer were less than 72.65 billion?</b></p> <p>22           A. Yes.</p> <p>23           <b>Q. It went down to a number of about</b></p> <p>24 <b>50 billion, correct?</b></p> <p>25           A. I am not sure it ever went as low as</p>

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 90</p> <p>2 that, but anyway it certainly went down.</p> <p>3 Q. How low did it go in your recollection?</p> <p>4 A. Somewhere between 50 and 60 billion.</p> <p>5 Q. And part of the reason for that change</p> <p>6 from 72 to the 50 to 60 billion range is assets</p> <p>7 that could not be transferred to Barclays,</p> <p>8 correct?</p> <p>9 MR. HUME: Objection, lacks foundation.</p> <p>10 A. Yes, that is right. I mean, insofar as</p> <p>11 they were transactions that were being settled</p> <p>12 elsewhere, and so the securities would not be</p> <p>13 available for transfer to Barclays.</p> <p>14 Q. Going back to Exhibit 140A, the 3-pager,</p> <p>15 on the third page of that exhibit, there is an</p> <p>16 analysis set forth. Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. Do you have an understanding of what</p> <p>19 that analysis is?</p> <p>20 A. General, yes.</p> <p>21 Q. Generally, could you tell us what that</p> <p>22 analysis is?</p> <p>23 A. It is a summarization of the inventory</p> <p>24 which has been reversed in from other entities or</p> <p>25 repo'd out. The LBI proprietary matched book is</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 91</p> <p>2 a representation of the inventory which is both</p> <p>3 reversed in and repo'd out.</p> <p>4 Q. If you can just explain what a matched</p> <p>5 book is? It is a phrase I have seen in some of</p> <p>6 the e-mails. I want to get a better understanding</p> <p>7 of what that is.</p> <p>8 A. The matched book is a financing business</p> <p>9 where securities are financed on behalf of</p> <p>10 customers and the matching that is on the other</p> <p>11 side, they are financed to the street or with</p> <p>12 other customers, so it is an activity where the</p> <p>13 financing should be matched.</p> <p>14 Q. And presumably Lehman are in some spread</p> <p>15 in the course of this matched activity?</p> <p>16 A. It should, yes.</p> <p>17 Q. During the course of this week</p> <p>18 of September 15 was the matched book reduced down</p> <p>19 effectively to zero?</p> <p>20 A. As close as possible to zero.</p> <p>21 Q. Were you involved during this time</p> <p>22 period, September 18, September 19, in identifying</p> <p>23 or helping to identify those assets of LBI that</p> <p>24 would be available for transfer to Barclays?</p> <p>25 A. Yes, particularly in the sort of</p>
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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 92</p> <p>2 18th/19th period.</p> <p>3 Q. And Mr. Azerad was involved in that</p> <p>4 process as well?</p> <p>5 A. Yes.</p> <p>6 Q. Was Mr. Martin Kelly involved in that as</p> <p>7 well?</p> <p>8 A. Yes.</p> <p>9 Q. What was Mr. Kelly's position?</p> <p>10 A. Martin was the financial controller so</p> <p>11 he was the accounting -- he was essentially the</p> <p>12 accountant for the group, chief accountant for the</p> <p>13 group.</p> <p>14 Q. Your co-equal or your subordinate?</p> <p>15 A. We were both direct reports to the CFO.</p> <p>16 Q. Gerry Reilly, Gerard Reilly, what was</p> <p>17 his position?</p> <p>18 A. He was the product controller, the head</p> <p>19 of products control, which is really the business</p> <p>20 CFO, business units' CFO.</p> <p>21 Q. Which business units?</p> <p>22 A. He actually oversaw all of the business</p> <p>23 units.</p> <p>24 Q. Give me a description of what you would</p> <p>25 consider a business unit?</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 93</p> <p>2 A. Just any of the fixed income for</p> <p>3 example, any of the trading businesses.</p> <p>4 Q. So fixed income was a business unit that</p> <p>5 he would oversee?</p> <p>6 A. Right. I would think of Gerry as being</p> <p>7 the management accountant and Martin being the</p> <p>8 entity accountant, if that makes any sense.</p> <p>9 Q. Not entirely, but that is fine. We will</p> <p>10 move on. Francis Pearn, P-E-A-R-N?</p> <p>11 A. Yes.</p> <p>12 Q. Who was Francis?</p> <p>13 A. He worked for Gerry.</p> <p>14 Q. Were Gerry and Francis involved in this</p> <p>15 process we talked about, identifying the assets of</p> <p>16 LBI that were in fact transferable to Barclays?</p> <p>17 A. They were, yes.</p> <p>18 (Exhibit 141A marked for identification)</p> <p>19 Q. I have handed you an exhibit marked</p> <p>20 Exhibit 141A, which is a cover e-mail with</p> <p>21 a spreadsheet attached to it. If you could</p> <p>22 generally look at the cover e-mail and the</p> <p>23 spreadsheet attached, I will ask you some general</p> <p>24 questions and then maybe some specific ones about</p> <p>25 the spreadsheet. Just let me know when you are</p>

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 114</p> <p>2 So given that the -- you have to understand that</p> <p>3 this is a transaction where the actual assets being</p> <p>4 transferred over is really only being finalized on that</p> <p>5 morning, and is still being reviewed, and so we were trying</p> <p>6 to provide support and assistance insofar as, you know,</p> <p>7 determining the securities and a potential value for those.</p> <p>8 But this is not something which had already been reviewed</p> <p>9 and values confirmed by Barclays, and the BONY system could</p> <p>10 also have had problems with valuing some of these</p> <p>11 securities.</p> <p>12 Q. The one large position you were talking</p> <p>13 about, that is Pine?</p> <p>14 A. Yes.</p> <p>15 Q. What was Pine?</p> <p>16 A. Pine was a CLO, which is</p> <p>17 a collateralized loan obligation.</p> <p>18 Q. I have handed you a document that was</p> <p>19 previously marked as Exhibit 47. It is about</p> <p>20 3 pages of cover e-mails, 4 pages of cover</p> <p>21 e-mails, and a large spreadsheet. If you can</p> <p>22 review the e-mails and take a look at the</p> <p>23 spreadsheet, let me know when you are done, and I</p> <p>24 will ask you some questions about them.</p> <p>25 MR. HUME: The binding of this exhibit</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 115</p> <p>2 was obviously done for ease of presentation,</p> <p>3 right? It was not presented like this originally.</p> <p>4 A. Yes.</p> <p>5 Q. Reviewing this chain of e-mails,</p> <p>6 starting with the earliest e-mail, which is an</p> <p>7 e-mail from you to various people, the subject</p> <p>8 line is: "Delivering other assets to Barclays".</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And is that a reference to this process</p> <p>12 we talked about, the assets over and above the</p> <p>13 repo assets?</p> <p>14 A. That is correct.</p> <p>15 Q. Take a look at the first page of this</p> <p>16 exhibit, the e-mail, page 1, Exhibit 47. At the</p> <p>17 top of the page there is an e-mail from David</p> <p>18 Murgio at Weil to two additional people, V Lewkow</p> <p>19 and R Davis. Do you see that?</p> <p>20 A. I do.</p> <p>21 Q. Was it your understanding that</p> <p>22 spreadsheet information about the collateral was</p> <p>23 provided by lawyers for the estate to the lawyers</p> <p>24 for Barclays?</p> <p>25 A. Yes.</p>
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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 116</p> <p>2 Q. There is a reference to BarCap</p> <p>3 collateral.xls. Do you see that file?</p> <p>4 A. I do.</p> <p>5 Q. That was the same file that you had sent</p> <p>6 over earlier, right, Exhibit 143A?</p> <p>7 A. Yes.</p> <p>8 Q. If you turn to the fifth page, Bates</p> <p>9 number 5138 are the last four digits, do you see</p> <p>10 that calculation up there?</p> <p>11 A. I do, yes.</p> <p>12 Q. And it is a total of 49.9 billion. Do</p> <p>13 you see that?</p> <p>14 A. I do.</p> <p>15 Q. And that is in the market value column?</p> <p>16 A. I see that.</p> <p>17 Q. And there is four components to that</p> <p>18 total. Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. The first is Fed collateral?</p> <p>21 A. Yes.</p> <p>22 Q. Do you have an understanding of what</p> <p>23 that item is?</p> <p>24 A. Yes.</p> <p>25 Q. What is it?</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 117</p> <p>2 A. It is Fed wireable collateral that was</p> <p>3 transferred over, Fed wire being the market</p> <p>4 settlement system for this type of collateral.</p> <p>5 Q. The next line item is DTC074. Do you</p> <p>6 see that?</p> <p>7 A. I do.</p> <p>8 Q. Is that an account or a box at DTC?</p> <p>9 A. That is I think an account at DTC.</p> <p>10 Q. A Lehman account?</p> <p>11 A. Yes.</p> <p>12 Q. The next item is DTC636. Do you see</p> <p>13 that?</p> <p>14 A. I do.</p> <p>15 Q. What is your understanding of what that</p> <p>16 is?</p> <p>17 A. That is a different type of DTC account.</p> <p>18 Q. And in the last line item is "TP</p> <p>19 cashed". What does that stand for?</p> <p>20 A. That is the tri-party cash.</p> <p>21 Q. Was it your understanding on</p> <p>22 Friday September 19 that there was 7 billion</p> <p>23 dollars in cash to be delivered to Barclays?</p> <p>24 A. I understood that \$7 billion of cash had</p> <p>25 been given by -- had been deposited by Barclays</p>

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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	118	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	119
2	with JP Morgan and that it was being held by		2	Q. If you go down to page 5139, do you see	
3	JP Morgan.		3	that?	
4	Q. Was it your understanding of -- I guess		4	A. I do.	
5	these e-mails are all dated September 20, so was		5	Q. There is a column titled "Market value"?	
6	it your understanding on September 20, 2008, that		6	A. Yes.	
7	the total value of the collateral on the cash in		7	Q. Do you know what the source of that	
8	the transaction was 49.9 billion?		8	market value information was in this spreadsheet?	
9	MR. HUME: Objection, vague and		9	A. I believe that this was the Lehman price	
10	ambiguous as to the value.		10	market value.	
11	A. This was my view of the repo transaction		11	(Exhibit 144A marked for identification)	
12	on the Thursday night, and it was limited to that,		12	Q. I have handed you a one page document	
13	just to the repo transaction.		13	entitled Exhibit 144A. Take a moment to look at	
14	Q. So the 15c3 cash, for example, would be		14	that and let me know when you are done.	
15	in addition to this?		15	A. Yes.	
16	A. That is correct, yes, as well as the		16	Q. Have you seen this document before	
17	other unencumbered collateral, as well as other		17	today?	
18	components to the agreement.		18	A. I have not, no.	
19	Q. The other unencumbered collateral, that		19	Q. Do you remember the information that is	
20	would be the Schedule B collateral?		20	contained in this document?	
21	A. That is what became Schedule B		21	A. I do.	
22	collateral, that is right.		22	Q. If you can just go through the	
23	Q. So that would be added to these items		23	components, the components I want to talk to you	
24	here?		24	about are the component that add up to the total	
25	A. That is right.		25	securities cash received item. Do you see that?	
Page 120			Page 121		
1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	120	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	121
2	A. Okay, yes.		2	A. I do.	
3	Q. If you start with the Fed wire		3	Q. And that is 390 million. This is an	
4	securities, that is similar to the Fed collateral		4	e-mail dated as of September 19, 2008. Do you	
5	entry we were discussing earlier, correct?		5	have an understanding as to what that means?	
6	A. Correct.		6	A. I don't know the specifics.	
7	Q. And the next item is "DTC cash". Do you		7	Q. And that rolled up into 52.19 billion	
8	see that?		8	total. Do you see that?	
9	A. I do.		9	A. Yes.	
10	Q. Do you have an understanding as to what		10	Q. Again, this does not include, as far as	
11	that is?		11	you know, the 15c3 cash, correct?	
12	A. DTC securities.		12	A. That is correct.	
13	Q. The next item down "DTC cash .3".		13	Q. Do you know whether this includes	
14	I assume these are billions?		14	Schedule B?	
15	A. Yes.		15	A. I would presume that the "Today DTC	
16	Q. Do you have an understanding of what		16	collateral" includes some of what became the	
17	that line item is?		17	Schedule B collateral.	
18	A. I assume it is more DTC securities.		18	Q. When you look below the total securities	
19	Q. The reference to "Repo cash, 7 billion".		19	cash received there is a repo cash amount. Do you	
20	Do you see that?		20	see that?	
21	A. Yes.		21	A. Yes.	
22	Q. We have discussed that before?		22	Q. And that is 45 billion?	
23	A. That is correct.		23	A. Yes.	
24	Q. And then it says "Today DTC collateral".		24	Q. So the differential between the value of	
25	Do you see that?		25	the securities and cash received and the repo cash	



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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	122	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	123
2	amount is listed as excess collateral there,		2	A. I know Stephen, yes.	
3	right?		3	Q. Is he in your group?	
4	A. That is right.		4	A. No.	
5	Q. That is \$7 billion?		5	Q. Back in the last quarter of 2008, did	
6	A. Yes.		6	you work with Gerry or Stephen?	
7	Q. So that is the excess of market value		7	A. Yes, intermittently. I mean we were not	
8	over cash paid for the repo?		8	in the same group but we worked together on a few	
9	A. That is, you know, what it looks like.		9	things, you know.	
10	Q. And this, as far as you can tell, the		10	(Exhibit 145A marked for identification)	
11	folks who have sent this e-mail around are all		11	Q. I have had placed before you a 3-page	
12	Barclays folks, right?		12	document marked Exhibit 145A.	
13	A. Yes.		13	A. Yes.	
14	Q. Not former Lehman people, is that right?		14	Q. If you take a moment to look at that	
15	A. No.		15	e-mail chain and let me know when you are done.	
16	Q. And are they also still at Barclays?		16	A. Yes.	
17	A. I have no idea.		17	Q. You will see the subject line of the	
18	Q. Do you know any of these names, Gerry		18	series of e-mails is "Opening balance sheet". Do	
19	LaRocca?		19	you see that?	
20	A. I do.		20	A. I do.	
21	Q. Does Gerry work with you?		21	Q. This is part of the effort that you had	
22	A. No.		22	testified about before, which was preparing the	
23	Q. Not in your department or group?		23	initial opening balance sheet?	
24	A. No.		24	A. That is correct.	
25	Q. Stephen King?		25	Q. It starts off with an e-mail from Martin	
Page 124			Page 125		
1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	124	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	125
2	Kelly to Robert Azerad, Blackwell and Beldner,		2	assets and paid net 38 billion of cash." Do you	
3	right. Who was Brett Beldner?		3	see that?	
4	A. He is an accountant who worked for		4	A. Yes.	
5	Martin Kelly.		5	Q. That is one item in your e-mail,	
6	Q. He was at Lehman, right?		6	correct?	
7	A. He was.		7	A. Correct.	
8	Q. Is he now at Barclays?		8	Q. And that is your recap of the repo	
9	A. I don't know.		9	situation?	
10	Q. You are copied on that e-mail at the		10	A. That is correct.	
11	bottom of page 2, right?		11	Q. You have a second item: "Their opening	
12	A. Yes.		12	balance sheet should also include 1.9 billion of	
13	Q. If you go over to page 1 of this		13	box assets". Correct?	
14	Exhibit 145A, it is the e-mail at the bottom of		14	A. Correct.	
15	the page which is an e-mail from you to a group of		15	Q. What is that a reference to?	
16	people. Do you see that?		16	A. The unencumbered collateral.	
17	A. Yes.		17	Q. Schedule B?	
18	Q. And you have got sort of two items in		18	A. Which became Schedule B.	
19	your e-mail, correct?		19	Q. I guess there is a third item then, "and	
20	MR. HUME: Which e-mail?		20	one billion of cash receivable from the release of	
21	Q. The bottom of page 1. Are you with me,		21	lock ups." Correct?	
22	Mr. Tonucci?		22	A. That is correct.	
23	A. What are the two items?		23	Q. And that is the 15c3?	
24	Q. The first item is "I think they have		24	A. That is correct.	
25	..." and you correct yourself, "42.9 billion of		25	Q. And at least on the morning	

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<p>1           <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>           126</p> <p>2    of September 20 those were the sort of three</p> <p>3    components you were thinking of as comprising the</p> <p>4    balance sheet. Correct?</p> <p>5           MR. HUME: Objection, lacks foundation.</p> <p>6           A. Those were the components that I was</p> <p>7    aware of, so I was not the accountant and I was</p> <p>8    not on the negotiation team and I was not aware of</p> <p>9    any other entries that may be being made for</p> <p>10   example on the liability side or for other assets</p> <p>11   over and above these.</p> <p>12    <b>Q. Just on a net basis, the three</b></p> <p>13    <b>components that you identified at the bottom of</b></p> <p>14    <b>page 1, there is a net of 4 billion on the repo</b></p> <p>15    <b>piece, correct?</b></p> <p>16           A. If you are calculating the 42.9 minus</p> <p>17    the 38.</p> <p>18    <b>Q. Yes.</b></p> <p>19           A. That is the calculation you are doing?</p> <p>20    <b>Q. That is the calculation. It is actually</b></p> <p>21    <b>4.9.</b></p> <p>22           A. That is correct.</p> <p>23    <b>Q. You add to that the 1.9 of boxed assets?</b></p> <p>24           A. Yes.</p> <p>25    <b>Q. With no offsetting liability against</b></p>	<p>1           <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>           127</p> <p>2    <b>that 1.9?</b></p> <p>3           MR. HUME: Objection, lacks foundation.</p> <p>4           A. That is not clear to me. I can only</p> <p>5    tell you the asset side that I was aware of.</p> <p>6           <b>Q. So the asset side you have net assets on</b></p> <p>7    <b>the repo of 4.9, 1.9 on the box assets and then</b></p> <p>8    <b>a billion on the cash receivable?</b></p> <p>9           MR. HUME: Objection, vagueness, vague</p> <p>10   and ambiguous.</p> <p>11           MR. TAMBE: Right?</p> <p>12           A. You can read it.</p> <p>13    <b>Q. And that is a total of what, about</b></p> <p>14    <b>7.9 billion?</b></p> <p>15           MR. HUME: Objection, lacks foundation.</p> <p>16    You are just asking him to do the maths?</p> <p>17           A. You are just asking me to add up?</p> <p>18    <b>Q. 7.8 billion --</b></p> <p>19           A. Yes.</p> <p>20    <b>Q. Were you aware of any liabilities that</b></p> <p>21    <b>offset that 7.8 billion dollars of net assets</b></p> <p>22    <b>delivered to Barclays?</b></p> <p>23           A. I knew there were some liabilities.</p> <p>24    <b>Q. What magnitude?</b></p> <p>25           A. I was not sure but I knew that there</p>
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<p>1           <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>           128</p> <p>2    were liabilities for compensation and for other</p> <p>3    payments, services and so on that, you know, were</p> <p>4    not part of the numbers that I was putting</p> <p>5    together.</p> <p>6           (Exhibit 146A marked for identification)</p> <p>7    <b>Q. I have handed you a 3-page document</b></p> <p>8    <b>marked Exhibit 146A, an e-mail chain. Let me know</b></p> <p>9    <b>when you are done reviewing it.</b></p> <p>10           A. Yes.</p> <p>11    <b>Q. Do you recognize this as a series of</b></p> <p>12    <b>e-mails between folks at Lehman about a transfer</b></p> <p>13    <b>of collateral to BarCap?</b></p> <p>14           A. Yes.</p> <p>15    <b>Q. And this is a series of e-mails</b></p> <p>16    <b>dated September 22, 2008. Correct?</b></p> <p>17           A. Yes.</p> <p>18    <b>Q. And it is early in the morning, right,</b></p> <p>19    <b>6:00 or 7:00 am?</b></p> <p>20           A. Yes.</p> <p>21    <b>Q. And is that before the clarification</b></p> <p>22    <b>letter is signed?</b></p> <p>23           MR. HUME: Objection, lacks foundation.</p> <p>24    The witness has testified he didn't review it that</p> <p>25    week.</p>	<p>1           <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>           129</p> <p>2           A. I can't say.</p> <p>3    <b>Q. Do you recall there being some urgency</b></p> <p>4    <b>on the morning of September 22 to getting answers</b></p> <p>5    <b>to this question, "queuing up delivery to BarCap"?</b></p> <p>6           MR. HUME: Objection, vague.</p> <p>7           A. I don't really know but, you know,</p> <p>8    I would say that everyone was focused on doing</p> <p>9    their job.</p> <p>10    <b>Q. And what was your job that morning?</b></p> <p>11           A. Well, we were trying to close the</p> <p>12    transaction in an orderly way.</p> <p>13    <b>Q. There is an e-mail at the bottom of page</b></p> <p>14    <b>1 over to page 2 from Monty Forrest to you and</b></p> <p>15    <b>Robert Azerad. Do you see that e-mail?</b></p> <p>16           A. Yes.</p> <p>17    <b>Q. And his first numbered point, which is</b></p> <p>18    <b>at the bottom of page 1 over on to page 2 states:</b></p> <p>19    <b>"What was the final agreed upon list (our</b></p> <p>20    <b>version or the version after Robert took out and</b></p> <p>21    <b>re-marked Lehman paper.)"</b></p> <p>22           Do you see that?</p> <p>23           A. Yes.</p> <p>24    <b>Q. Do you understand the reference to</b></p> <p>25    <b>re-marked Lehman paper?</b></p>



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<p>1 <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b> 130</p> <p>2 A. Well, just I think it is more relevant</p> <p>3 that he just removed the Lehman paper. There was</p> <p>4 some -- in the original unencumbered list there</p> <p>5 was some securities which were Lehman issued.</p> <p>6 <b>Q. It is not your understanding that there</b></p> <p>7 <b>was a mark down of Lehman paper by Robert in that</b></p> <p>8 <b>list?</b></p> <p>9 A. That is not what it refers to.</p> <p>10 (Exhibit 147A marked for identification)</p> <p>11 <b>Q. I have handed you a 2-page document</b></p> <p>12 <b>marked Exhibit 147A, an e-mail chain. Please</b></p> <p>13 <b>review it and let me know when you are done.</b></p> <p>14 A. Yes.</p> <p>15 <b>Q. And you recognize this as a series of</b></p> <p>16 <b>e-mails, again dated September 22, 2008?</b></p> <p>17 A. Yes.</p> <p>18 <b>Q. And these are additional e-mails about</b></p> <p>19 <b>the financing facility?</b></p> <p>20 A. Additional e-mails about the securities</p> <p>21 that were transferred over and confirmation of</p> <p>22 those securities.</p> <p>23 <b>Q. On page 2 of this exhibit, the body of</b></p> <p>24 <b>the e-mail from Jasen Yang to Robert Azerad and</b></p> <p>25 <b>James Hraska. Do you see that?</b></p>	<p>1 <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b> 131</p> <p>2 A. Yes.</p> <p>3 <b>Q. And you are seen as a copy on that</b></p> <p>4 <b>e-mail?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. It appears from that e-mail that he is</b></p> <p>7 <b>sending over to you the BONY valuation of the</b></p> <p>8 <b>collateral, is that right?</b></p> <p>9 A. Sending over the BONY file, which</p> <p>10 includes the valuation, but it obviously also</p> <p>11 includes the details around nominal and</p> <p>12 securities.</p> <p>13 <b>Q. There is a reference to BONY market</b></p> <p>14 <b>value of approximately 45MM. Do you see that?</b></p> <p>15 A. Yes.</p> <p>16 <b>Q. He was referring to a 45 billion-dollar</b></p> <p>17 <b>value, correct?</b></p> <p>18 A. I assume so.</p> <p>19 <b>Q. You will see on page 1 of the e-mail</b></p> <p>20 <b>a reference to "fast reconciliation". Do you see</b></p> <p>21 <b>that?</b></p> <p>22 A. I do.</p> <p>23 <b>Q. Was that sort of the beginning of the</b></p> <p>24 <b>reconciliation process you talked about before?</b></p> <p>25 A. We had tried to do an initial</p>
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<p>1 <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b> 132</p> <p>2 reconciliation on the Friday. This was</p> <p>3 a subsequent reconciliation and at a more detailed</p> <p>4 level. Jasen had identified what he saw as some</p> <p>5 discrepancies, and we were trying to resolve</p> <p>6 whether those discrepancies existed, principally</p> <p>7 in the securities that were transferred over and</p> <p>8 the nominal value of those securities.</p> <p>9 (Break from 10:37 to 10:55 am.)</p> <p>10 <b>MR. TAMBE: Mr. Tonucci, I have placed</b></p> <p>11 <b>before you a document marked Exhibit 126. Can you</b></p> <p>12 <b>take a moment to look at the e-mail chain and let</b></p> <p>13 <b>me know when you are done.</b></p> <p>14 A. Yes.</p> <p>15 <b>Q. Starting with the e-mail at the bottom</b></p> <p>16 <b>of the page, it is from Gerry Reilly to Ian Lowitt</b></p> <p>17 <b>and Michael Gelband. You are copied on it. Do</b></p> <p>18 <b>you see that?</b></p> <p>19 A. I do.</p> <p>20 <b>Q. There are three numbered items in that</b></p> <p>21 <b>e-mail. Do you see that?</b></p> <p>22 A. Yes.</p> <p>23 <b>Q. The third item reads: "Not clear on the</b></p> <p>24 <b>amount of blocked discount or how we make it</b></p> <p>25 <b>happen." Do you see that?</b></p>	<p>1 <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b> 133</p> <p>2 A. Yes.</p> <p>3 <b>Q. And you understand that to be</b></p> <p>4 <b>a reference to the 5 billion-dollar discount that</b></p> <p>5 <b>we talked about earlier?</b></p> <p>6 <b>MR. HUME: Objection, lacks foundation.</b></p> <p>7 A. I understand it to be a reference to the</p> <p>8 discount on purchase, so I would have linked it to</p> <p>9 that \$5 billion.</p> <p>10 <b>Q. Then the next sentence reads:</b></p> <p>11 <b>"Defaulting on repo could be the best as</b></p> <p>12 <b>discounts could be taken from the haircut."</b></p> <p>13 <b>Do you see that?</b></p> <p>14 A. Yes.</p> <p>15 <b>Q. Do you remember discussing with anyone</b></p> <p>16 <b>at Lehman defaulting on the repo as a way of</b></p> <p>17 <b>providing the discount to Barclays?</b></p> <p>18 A. Yes.</p> <p>19 <b>Q. With whom did you discuss that?</b></p> <p>20 A. I think it was with Ian and with Gerry,</p> <p>21 perhaps Martin Kelly as well.</p> <p>22 <b>Q. And then in Gerry's e-mail at the bottom</b></p> <p>23 <b>of this e-mail chain on exhibit 126 he says:</b></p> <p>24 <b>"If not that then we need to give business an</b></p> <p>25 <b>allocation of block discount so they can mark down the</b></p>

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<p>1           <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>           134</p> <p>2       <b>books tonight."</b></p> <p>3       <b>Do you see that?</b></p> <p>4       A. Yes.</p> <p>5       <b>Q. Do you recall if that ever happened,</b></p> <p>6 <b>whether there was an allocation of a block</b></p> <p>7 <b>discount?</b></p> <p>8       A. I don't know.</p> <p>9       <b>Q. Does the phrase "block discount" have</b></p> <p>10 <b>any meaning to you?</b></p> <p>11      A. Not really.</p> <p>12      <b>Q. Other than what we have talked about</b></p> <p>13 <b>here?</b></p> <p>14      A. Other than in this context.</p> <p>15      <b>Q. The next e-mail up, from Ian Lowitt to</b></p> <p>16 <b>Gerry Reilly and Michael Gelband talks about</b></p> <p>17 <b>"shrinking down matched book". Do you see that?</b></p> <p>18      A. I do.</p> <p>19      <b>Q. Do you understand that to be a reference</b></p> <p>20 <b>to what we talked about before, about the matched</b></p> <p>21 <b>book being shrunk down to zero?</b></p> <p>22      A. Yes.</p> <p>23      <b>Q. The first bullet point in Gerry Reilly's</b></p> <p>24 <b>e-mail at the bottom of the page talks about the</b></p> <p>25 <b>option rate book. Do you see that?</b></p>	<p>1           <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>           135</p> <p>2      A. Yes.</p> <p>3      <b>Q. Was it your understanding during this</b></p> <p>4 <b>week of 15 September that there were assets that</b></p> <p>5 <b>Barclays was picking and choosing as to which</b></p> <p>6 <b>assets it was prepared to purchase?</b></p> <p>7      A. That is right.</p> <p>8      MR. HUME: Objection.</p> <p>9      A. That was my understanding.</p> <p>10     <b>Q. And from whom did you get that</b></p> <p>11 <b>understanding?</b></p> <p>12     A. I can't recall but I understood that</p> <p>13 <b>they were not going to be buying all the assets.</b></p> <p>14     <b>Q. Was it your understanding that there was</b></p> <p>15 <b>a change or an evolution in the transaction where</b></p> <p>16 <b>it went from being all assets to only some assets?</b></p> <p>17     A. No, I understood that it was never all</p> <p>18 <b>assets.</b></p> <p>19     <b>Q. Did you have an understanding as to who</b></p> <p>20 <b>was making the decisions as to which assets it</b></p> <p>21 <b>would be?</b></p> <p>22     A. It was -- I think it was the negotiation</p> <p>23 <b>team, Barclays and Lehman negotiation team.</b></p> <p>24     <b>Q. Was it your understanding that it was</b></p> <p>25 <b>Barclays making the decisions?</b></p>
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<p>1           <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>           136</p> <p>2      A. Well, they were the buyers so they would</p> <p>3 <b>by extension have the final decision on what</b></p> <p>4 <b>assets are bought.</b></p> <p>5      <b>Q. I have placed before you a document</b></p> <p>6 <b>marked Exhibit 127. It is another branch in the</b></p> <p>7 <b>e-mail chain that we were looking at before in</b></p> <p>8 <b>126. Let me know when you are done with the</b></p> <p>9 <b>document.</b></p> <p>10     A. Yes.</p> <p>11     <b>Q. So it starts with the same Gerry Reilly</b></p> <p>12 <b>e-mail at the bottom but there is a different</b></p> <p>13 <b>e-mail at the top. At the top of the document</b></p> <p>14 <b>there is an e-mail from Eric Felder to various</b></p> <p>15 <b>e-mail at Lehman. Do you see that?</b></p> <p>16     A. Yes.</p> <p>17     <b>Q. And Eric says:</b></p> <p>18       <b>"The Barclays guys chose the assets. We did not</b></p> <p>19 <b>have anything to do with it."</b></p> <p>20     <b>Do you see that?</b></p> <p>21     A. Yes.</p> <p>22     <b>Q. And that was consistent with your</b></p> <p>23 <b>understanding of how the assets were picked --</b></p> <p>24       MR. HUME: Objection to the lack of</p> <p>25 <b>foundation. Mr. Tonucci is not on that e-mail.</b></p>	<p>1           <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>           137</p> <p>2      A. I mean, I have only seen this e-mail in</p> <p>3 <b>the deposition process and I have not spoken to</b></p> <p>4 <b>Eric and I was not part of the negotiation team.</b></p> <p>5 <b>I am not sure what Eric was seeing. Eric was also</b></p> <p>6 <b>not -- you know, he was running the credit book so</b></p> <p>7 <b>I don't know if he would have seen all parts of</b></p> <p>8 <b>this process.</b></p> <p>9      <b>Q. Basically, one way or the other, you</b></p> <p>10 <b>don't know whether what Eric says here is right?</b></p> <p>11     A. That is right.</p> <p>12       (Exhibit 148A marked for identification)</p> <p>13     <b>Q. I have handed you a 2-page document</b></p> <p>14 <b>marked Exhibit 148A. Let me know when you are</b></p> <p>15 <b>done with it.</b></p> <p>16     A. Okay.</p> <p>17     <b>Q. In the top e-mail on this chain of</b></p> <p>18 <b>e-mails from Gerry Reilly to Martin Kelly and</b></p> <p>19 <b>Daniel Flores, I want you to focus on that e-mail.</b></p> <p>20 <b>Do you have it there?</b></p> <p>21     A. I do.</p> <p>22     <b>Q. You are not shown as a copy on any of</b></p> <p>23 <b>these e-mails. Can I ask you about a phrase that</b></p> <p>24 <b>is used in this e-mail. The third sentence of</b></p> <p>25 <b>that e-mail, Gerry Reilly's e-mail states that:</b></p>

<p style="text-align: right;">Page 138</p> <p>1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           138</p> <p>2           <b>"Purchase will be at a fixed discount on the</b></p> <p>3 <b>assets that remain to reflect the bulk size of the</b></p> <p>4 <b>purchase".</b></p> <p>5           <b>Do you see that?</b></p> <p>6           A. I do.</p> <p>7           <b>Q. Did anyone ever describe for you the</b></p> <p>8 <b>reason for the discount being the bulk size of the</b></p> <p>9 <b>purchase?</b></p> <p>10          A. I don't recall that, no.</p> <p>11          <b>Q. Does that phrase have any meaning to</b></p> <p>12 <b>you?</b></p> <p>13          A. I have not seen it before.</p> <p>14          <b>Q. Then the next sentence in Gerry Reilly's</b></p> <p>15 <b>e-mail starts off by saying: "We can track our</b></p> <p>16 <b>PL..." Is that profit and loss?</b></p> <p>17          A. Yes.</p> <p>18          <b>Q. "... by assets category, which gives</b></p> <p>19 <b>some indication of how much we have moved the</b></p> <p>20 <b>marks". Do you see that?</b></p> <p>21          A. Yes.</p> <p>22          <b>Q. Do you understand the reference to</b></p> <p>23 <b>"moving the marks"?</b></p> <p>24          A. Yes. Can I give you just a bit of</p> <p>25 context, because I think that you are sort of</p>	<p style="text-align: right;">Page 139</p> <p>1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           139</p> <p>2           misunderstanding some of this. Post Lehman, even</p> <p>3 pre the Lehman filing on the weekend of</p> <p>4 12/13/14th, there was a tremendous amount of price</p> <p>5 volatility and tremendous amount of uncertainty in</p> <p>6 sort of the traded price of a lot of securities,</p> <p>7 even those which were exchange traded, and</p> <p>8 therefore there was more visibility on -- we were</p> <p>9 experiencing a huge amount of volatility. The</p> <p>10 process of re-marking, that was something that</p> <p>11 would typically be conducted on a daily basis and</p> <p>12 was conducted by thousands of traders, so it was</p> <p>13 not as though there was one person with a giant</p> <p>14 brain sat at the centre of this re-marking process</p> <p>15 who had understanding or an ability to re-mark all</p> <p>16 of these assets. It really was a very distributed</p> <p>17 process which involved many, many people, because</p> <p>18 they were responsible for their trading books and</p> <p>19 for the risks on those trading books, and had the</p> <p>20 best understanding of the securities.</p> <p>21           So on any given day there was going to</p> <p>22 be a lot of price volatility and the movement in</p> <p>23 the marks was often just a function of market</p> <p>24 price volatility. It may also be a function of</p> <p>25 actual trading activity, but I would say that in</p>
<p style="text-align: right;">Page 140</p> <p>1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           140</p> <p>2           this week the amount of trading activity for these</p> <p>3 particular securities and for these traders was</p> <p>4 limited, so really it is a matter of sort of</p> <p>5 interpretation of where the market is.</p> <p>6           You have to add to that the fact that</p> <p>7 the holding company had filed and so the coverage</p> <p>8 of the desks was also impaired. I don't think</p> <p>9 that there would be every trader turning up and</p> <p>10 re-marking his book. So there was great</p> <p>11 difficulty in just creating the P&amp;L and in being</p> <p>12 able to track the movements. So that sort of</p> <p>13 added to the complexity here.</p> <p>14           So my interpretation here is that the</p> <p>15 amount that we have moved the marks is really just</p> <p>16 a reference to the traders re-marking their books</p> <p>17 because of this, because of what is being observed</p> <p>18 in the market, and it probably was the most</p> <p>19 volatile week in the market in the last nearly</p> <p>20 100 years. So very, very difficult, very</p> <p>21 difficult process, and we were not getting good</p> <p>22 P&amp;L's on a daily basis as a result. It was much</p> <p>23 more complicated than was typically the case, and</p> <p>24 on a typical day the process was complicated, so</p> <p>25 this was really extraordinarily difficult to</p>	<p style="text-align: right;">Page 141</p> <p>1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           141</p> <p>2           track, to track assets, the asset position and to</p> <p>3 track valuations.</p> <p>4           <b>Q. In the week of September 15 you did not</b></p> <p>5 <b>do any of the marking of the prices, right?</b></p> <p>6           A. Absolutely not.</p> <p>7           <b>Q. That is not something you do?</b></p> <p>8           A. No.</p> <p>9           <b>Q. You don't know specifically what traders</b></p> <p>10 <b>marked down what prices for what reason, correct?</b></p> <p>11          A. No.</p> <p>12          <b>Q. You don't know if the marking down was</b></p> <p>13 <b>pursuant to price movements in the market or</b></p> <p>14 <b>because they were allocated a block discount?</b></p> <p>15          A. I don't know with certainty, but you did</p> <p>16 ask me for my interpretation of this and my</p> <p>17 interpretation is that it is going to be</p> <p>18 predominantly because of the volatility in</p> <p>19 valuations in the market.</p> <p>20          <b>Q. Okay, and you don't know whether that is</b></p> <p>21 <b>because they were allocated a block discount to</b></p> <p>22 <b>mark down their books?</b></p> <p>23          A. I am saying that it is not because of</p> <p>24 the allocation of a block discount. My</p> <p>25 interpretation of this is that it was because of</p>

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<p>1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           142</p> <p>2   the market price movements.</p> <p>3       <b>Q. I have handed you a document marked as</b></p> <p>4   <b>Exhibit 71B. It is an e-mail exchange between</b></p> <p>5   <b>yourself and Alastair Blackwell. Do you see that?</b></p> <p>6       A. Yes.</p> <p>7       <b>Q. It is on Friday, September 19, 2008. Do</b></p> <p>8   <b>you see that?</b></p> <p>9       A. Yes.</p> <p>10      <b>Q. At the top of the e-mail Alastair asks</b></p> <p>11   <b>you: "Putting the repo into default is my</b></p> <p>12   <b>conversion?" Do you see that?</b></p> <p>13      A. Um hum.</p> <p>14      <b>Q. Do you have a recollection of having</b></p> <p>15   <b>a discussion with Alastair about putting the repo</b></p> <p>16   <b>into default on Friday, September 19?</b></p> <p>17      A. I don't, no.</p> <p>18      <b>Q. Any understanding of the phrase "my</b></p> <p>19   <b>conversion", what he meant by that?</b></p> <p>20      A. My interpretation would be that his area</p> <p>21    would have to rebook the repo, convert the repo</p> <p>22    into a sale transaction.</p> <p>23      <b>Q. And your understanding was that</b></p> <p>24   <b>a default on the repo really converted what was a</b></p> <p>25   <b>two-leg transaction; the repurchase leg would go</b></p>	<p>1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           143</p> <p>2   <b>away and there would effectively be a sale of the</b></p> <p>3   <b>asset?</b></p> <p>4       MR. HUME: Objection.</p> <p>5       A. That is correct. It would become</p> <p>6    a sale.</p> <p>7       (Exhibit 149A marked for identification)</p> <p>8       <b>Q. I have handed you a 2-page document</b></p> <p>9   <b>marked Exhibit 149A. Let me know when you are</b></p> <p>10   <b>done reviewing that document.</b></p> <p>11      A. Yes.</p> <p>12      <b>Q. Have you ever seen this document before</b></p> <p>13   <b>today?</b></p> <p>14      A. No.</p> <p>15      <b>Q. You know who Bob Diamond is, right?</b></p> <p>16      A. Yes.</p> <p>17      <b>Q. Who is he?</b></p> <p>18      A. He is the President of Barclays.</p> <p>19      <b>Q. Do you know who Michael Klein is?</b></p> <p>20      A. Yes.</p> <p>21      <b>Q. Who is Michael Klein?</b></p> <p>22      A. He is someone who was involved in the</p> <p>23    transaction.</p> <p>24      <b>Q. Is he someone that you dealt with during</b></p> <p>25   <b>that week of September 15?</b></p>
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<p>1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           144</p> <p>2       A. Yes, I spoke to him. I dealt with him</p> <p>3    you know, just through that week. I don't think I</p> <p>4    have seen him since then.</p> <p>5       <b>Q. Describe your interactions with</b></p> <p>6   <b>Mr. Klein during that week. What were you</b></p> <p>7   <b>speaking with him about?</b></p> <p>8       A. Predominantly it was clarification of</p> <p>9    the assets, so Michael was asking for various</p> <p>10   points, just details of the sort of asset</p> <p>11   schedules and some of the other transfers. That</p> <p>12   is all I can really recall.</p> <p>13      <b>Q. Was he part of the conversations on</b></p> <p>14   <b>Friday, September 19, about locating additional</b></p> <p>15   <b>assets and value for Barclays?</b></p> <p>16      A. I didn't speak to him on that, sorry, I</p> <p>17    don't know.</p> <p>18      <b>Q. In his e-mail to Bob Diamond on</b></p> <p>19   <b>Saturday, September 20, 2008, Mike says: "Great</b></p> <p>20   <b>day. We clawed back 3 billion more of value of</b></p> <p>21   <b>the transaction". Do you see that?</b></p> <p>22      A. I do see that.</p> <p>23      <b>Q. Any understanding as to what he is</b></p> <p>24   <b>referring to in the 3 billion more of value?</b></p> <p>25       MR. HUME: Objection, calls for</p>	<p>1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           145</p> <p>2    speculation.</p> <p>3       A. I don't know what would go into that</p> <p>4    specifically.</p> <p>5       <b>Q. Was it your understanding on Friday or</b></p> <p>6   <b>Saturday of that week that Lehman had provided an</b></p> <p>7   <b>additional \$3 billion of value to Barclays?</b></p> <p>8       MR. HUME: Objection, lacks foundation.</p> <p>9    Witness has testified he was not negotiating the</p> <p>10   economics of the deal.</p> <p>11      A. I can't really answer that, I don't</p> <p>12    know.</p> <p>13      <b>Q. But we have talked about a couple of</b></p> <p>14   <b>items of additional value on Friday, September 19,</b></p> <p>15   <b>right?</b></p> <p>16      A. We have, but we have also talked about</p> <p>17    the price volatility and the lack of certainty</p> <p>18    around the actual assets that were being</p> <p>19    transferred, and just the difficulty in</p> <p>20    establishing values. So I mean I wouldn't sort</p> <p>21    of, you know, I wouldn't sort of describe this as</p> <p>22    just additive to the original transaction. It was</p> <p>23    clearly changing.</p> <p>24      <b>Q. And among the items that were added was</b></p> <p>25   <b>1.9 billion in Schedule B, is that right?</b></p>

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 190</p> <p>2 MR. HUME: He is not qualified to</p> <p>3 articulate what is legal advice and it is</p> <p>4 privileged.</p> <p>5 <b>Q. Fine. Let me ask you, did you obtain</b></p> <p>6 <b>any advice from Mr. Willoughby?</b></p> <p>7 MR. HUME: Objection. Don't answer.</p> <p>8 <b>Q. I am not asking for the substance of any</b></p> <p>9 <b>advice I just want to know did Mr. Willoughby</b></p> <p>10 <b>respond and provide you with any advice following</b></p> <p>11 <b>that discussion that you had?</b></p> <p>12 MR. HUME: Object to the</p> <p>13 characterization of whether there was</p> <p>14 a communication. You can ask whether there was</p> <p>15 a communication from Mr. Willoughby.</p> <p>16 A. I don't recall.</p> <p>17 <b>Q. You don't recall receiving any</b></p> <p>18 <b>communication from Mr. Willoughby in response to</b></p> <p>19 <b>the discussion that you had in late September?</b></p> <p>20 A. That is right.</p> <p>21 <b>Q. And you don't recall following up with</b></p> <p>22 <b>Mr. Willoughby concerning that communication?</b></p> <p>23 A. That is right.</p> <p>24 <b>Q. So as far as you recall, you have never</b></p> <p>25 <b>touched this subject since that one discussion you</b></p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 191</p> <p>2 <b>had with Mr. Willoughby in late September, 2008?</b></p> <p>3 A. Certainly not that -- I don't recall</p> <p>4 speaking to Scott Willoughby and I would say that</p> <p>5 my involvement in this transaction subsequent to</p> <p>6 that was minimal.</p> <p>7 <b>Q. And you don't recall discussing this,</b></p> <p>8 <b>this I mean in the OCC positions and Barclays'</b></p> <p>9 <b>entitlement since September 2008 with anyone?</b></p> <p>10 A. No, I don't believe I have discussed</p> <p>11 with anyone.</p> <p>12 <b>Q. You testified earlier about unencumbered</b></p> <p>13 <b>assets, and specifically I want to ask you about</b></p> <p>14 <b>Schedule B that you mentioned. Where were the</b></p> <p>15 <b>assets that are listed on Schedule B physically</b></p> <p>16 <b>located?</b></p> <p>17 A. There were very many versions of</p> <p>18 Schedule B so you are going to have to be more</p> <p>19 specific.</p> <p>20 <b>Q. I am just now looking only for your</b></p> <p>21 <b>understanding as to where they were physically</b></p> <p>22 <b>custodied. If it is more than one place or</b></p> <p>23 <b>changed over time, let me know?</b></p> <p>24 A. That is what I am saying, it was more</p> <p>25 than one place and it changed over time.</p>
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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 192</p> <p>2 <b>Q. What were the different places where</b></p> <p>3 <b>those assets were --</b></p> <p>4 A. DTCC, JP Morgan, Euroclear. I can't</p> <p>5 remember the name of the Canadian depository, so</p> <p>6 those are the ones that I remember.</p> <p>7 <b>Q. At any time was Schedule B limited to</b></p> <p>8 <b>the unencumbered assets at DTC?</b></p> <p>9 A. Not that I am aware of.</p> <p>10 <b>Q. I will show you a document we will mark</b></p> <p>11 <b>as 164A.</b></p> <p>12 (Exhibit 164A marked for identification).</p> <p>13 If we start at the bottom, you will see there is</p> <p>14 an e-mail that then gets sent to you on 18 September, and</p> <p>15 then you forward to Mr. Azerad. Do you see that?</p> <p>16 A. I do.</p> <p>17 <b>Q. And the chain starts with what is called</b></p> <p>18 <b>a box summary. Can you tell me what the box</b></p> <p>19 <b>summary is?</b></p> <p>20 A. Yes, it is the securities in possession,</p> <p>21 in the clearance box.</p> <p>22 <b>Q. When you say "clearance box", is that</b></p> <p>23 <b>the clearance box at DTC?</b></p> <p>24 A. No, it could mean any number of</p> <p>25 custodial or depository arrangements.</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 193</p> <p>2 <b>Q. Then you will see Mr. Azerad's e-mail</b></p> <p>3 <b>says: "FYI, 3.2 billion at risk." Can you explain</b></p> <p>4 <b>what "3.2 billion at risk" means?</b></p> <p>5 A. I don't think I can.</p> <p>6 <b>Q. Did you have an understanding at the</b></p> <p>7 <b>time that you received this e-mail?</b></p> <p>8 A. I am assuming the 3.2 billion is the</p> <p>9 "stays at LBI" position. I am not too sure what</p> <p>10 the "at risk" means.</p> <p>11 MR. HUME: Don't speculate.</p> <p>12 <b>Q. In your e-mail you say: "That seems very</b></p> <p>13 <b>high. What are the assets they need to sell?"</b></p> <p>14 <b>Does that help you to understand what you were</b></p> <p>15 <b>hearing here and what you were following up with?</b></p> <p>16 A. Not really. I mean, there was a lot</p> <p>17 going on, and I am sure you have seen that there</p> <p>18 were a lot of e-mails that I was getting, so</p> <p>19 responses like that could be quite open, just</p> <p>20 because I don't really know what was going on and</p> <p>21 I was trying to get information from others.</p> <p>22 <b>Q. What was the Sparrow report?</b></p> <p>23 A. Charlie Sparrow was the mortgage trader,</p> <p>24 he was the head of the mortgage desk, so I think</p> <p>25 it was his report of positions.</p>

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<p>1           <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>           202</p> <p>2   the 800 million that had been transferred on the</p> <p>3   Friday?</p> <p>4       A. I don't. I would assume so.</p> <p>5       MR. HUME: Don't assume. Don't</p> <p>6   speculate.</p> <p>7       Q. The next is: "We have 746 million in</p> <p>8   074." Do you recognize that as a DTC box?</p> <p>9       A. I do.</p> <p>10      Q. You will see number 4 says: "We have</p> <p>11   identified another 300 million of mortgages in</p> <p>12   636." Do you know what 636 is a reference to?</p> <p>13      A. Another DTC box or account.</p> <p>14      Q. And Mr. Forrest says: "That is a total</p> <p>15   of 2.181 billion." Do you see that, sir?</p> <p>16      A. Yes.</p> <p>17      Q. Was there a specific target that people</p> <p>18   were shooting for, a specific total people were</p> <p>19   trying to get to?</p> <p>20      A. Not really.</p> <p>21      Q. So people were kind of keeping score of</p> <p>22   what they found but there was not any number that</p> <p>23   you had in mind as a target that you needed to get</p> <p>24   to?</p> <p>25      MR. HUME: Objection to the form.</p>	<p>1           <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>           203</p> <p>2       A. Not really. I mean I think, as Ian</p> <p>3   says, it is more important just to be accurate.</p> <p>4      <b>Q. You had mentioned that you had heard I</b></p> <p>5   <b>believe on the Friday that there was a need for</b></p> <p>6   <b>additional collateral in order for the transaction</b></p> <p>7   <b>to close; that was something that Mr. Lowitt told</b></p> <p>8   <b>you?</b></p> <p>9      A. Um hum.</p> <p>10     Q. And he reiterated that a number of times</p> <p>11   during the day?</p> <p>12     A. Yes.</p> <p>13     Q. Did he tell you how much additional</p> <p>14   collateral would be needed to make the transaction</p> <p>15   close?</p> <p>16     A. I thought -- no, I don't remember the</p> <p>17   total. It was more than 2 billion.</p> <p>18     Q. Was there a number that he gave you and</p> <p>19   you don't remember what that is now?</p> <p>20     A. I don't remember what it was. I don't</p> <p>21   remember if he gave me a number and I don't</p> <p>22   remember what it was.</p> <p>23     Q. Over the course of the next couple of</p> <p>24   days, the Saturday and the Sunday, did you hear of</p> <p>25   a target, a number that was needed in order to</p>
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<p>1           <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>           204</p> <p>2   <b>close the transaction?</b></p> <p>3       A. I think we had gone to the bankruptcy</p> <p>4   court on Friday with the unencumbered collateral</p> <p>5   at 1.9 billion, so that was our initial estimate,</p> <p>6   and then a further billion or so in the 15c3</p> <p>7   reserve account, so that would give nearly</p> <p>8   \$3 billion. I think that that is what everyone</p> <p>9   was expecting the value of the unencumbered</p> <p>10   collateral plus the 15c3 to be.</p> <p>11      Q. When you say "we went to the bankruptcy</p> <p>12   court", you are describing what everybody's</p> <p>13   expectation was at the time everybody went down to</p> <p>14   the bankruptcy court hearing?</p> <p>15      MR. HUME: Objection to the form,</p> <p>16   calling for speculation about what other people's</p> <p>17   expectations were.</p> <p>18      Q. That certainly was your understanding?</p> <p>19      A. It was my understanding.</p> <p>20      Q. Did you attend the hearing before the</p> <p>21   bankruptcy court?</p> <p>22      A. I did not.</p> <p>23      Q. Did you hear from anybody who did</p> <p>24   attend?</p> <p>25      A. Yes.</p>	<p>1           <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>           205</p> <p>2      Q. Who did you hear from?</p> <p>3       A. From Chris O'Meara.</p> <p>4      Q. Who was Chris O'Meara?</p> <p>5       A. He was at Lehman Brothers. He had been</p> <p>6   head of risk.</p> <p>7      Q. What did Chris O'Meara tell you about</p> <p>8   the hearing?</p> <p>9       A. That it was long and seemed to have gone</p> <p>10   well, and that the court had approved the sale.</p> <p>11      Q. Did he tell you anything else?</p> <p>12       A. No.</p> <p>13      Q. Did he tell you anything about any</p> <p>14   proceedings that had happened in the course of the</p> <p>15   hearing?</p> <p>16       A. No, he kept it to a minimum.</p> <p>17      Q. Did you hear from anyone else other than</p> <p>18   Chris O'Meara about the hearing?</p> <p>19       A. I did not.</p> <p>20      Q. I will show you a document we will mark</p> <p>21   as Exhibit 169A.</p> <p>22           (Exhibit 169A marked for identification).</p> <p>23           The subject of these e-mails is "PL on 9/18". Do</p> <p>24   you have an understanding what "PL" refers to?</p> <p>25       A. I am not sure here. I am not</p>

HIGHLY CONFIDENTIAL - A. KIRK  
UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

In Re:

Chapter 11

LEHMAN BROTHERS Case No. 08-13555(JMP)  
HOLDINGS, INC., et al., (Jointly Administered)

Debtors.

-----x

\* \* \* HIGHLY CONFIDENTIAL \* \* \*

DEPOSITION OF ALEX KIRK

New York, New York

August 31, 2009

Reported by:

KATHY S. KLEPFER, RMR, RPR, CRR, CLR

JOB NO. 24545



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**HIGHLY CONFIDENTIAL - A. KIRK**  
myself down. And I'm going to ask you please to wait until there's a full question asked before you answer so that we can, as best we can, get a clear record.

A. Uh-huh.

**Q. Okay?**

**Did you have discussions with anyone other than your counsel, Mr. Kelley, to prepare for your deposition today?**

A. Yes.

**Q. With whom?**

A. I don't remember.

**Q. Mr. Kelley or anybody from his firm? Anybody outside of his firm?**

A. Outside his firm we met with the Barclays lawyers.

**Q. Okay.**

A. I don't remember their names.

**Q. And by whom are you employed, sir?**

A. Currently I'm not employed.

**Q. Was there a time when you were employed at Lehman Brothers?**

A. Yes.

**Q. Can you give me, sir, just a brief**

**HIGHLY CONFIDENTIAL - A. KIRK**  
**description of the positions you held?**

**How long were you at Lehman?**

A. I was at Lehman two separate stints. I was at Lehman from December of 1994 until January of 2008.

**Q. Uh-huh.**

A. And I returned to Lehman in July of 2008. When I went to Lehman Brothers from basically July of -- or, December of 1994 till December 2001, I ran the distressed debt business for Lehman Brothers. From 2002 until 2006, I ran the high-yield and leveraged loan business for Lehman Brothers. From 2006 until October of 2007, I ran the global credit businesses. From October 2007 until January of '08, I was co-chief operating officer of fixed income, and from -- and then I left the firm. When I returned, I was global head of principal businesses for that brief period of time.

**Q. And why did you leave the firm in January of '08?**

A. The global head of fixed income, Roger Nagioff, had resigned; my partner, Andy Morton, was promoted to head of fixed income; and I

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**HIGHLY CONFIDENTIAL - A. KIRK**  
reached a mutual agreement to leave the firm with senior -- with the president of Lehman Brothers.

**Q. And where did you work in between January of '08 and July of '08 when you returned to Lehman?**

A. Didn't work.

**Q. And what occasioned your return to Lehman in July of '08?**

A. They had promoted Bart McDade to be president of the firm, and he requested that I return to the firm within a few days of his elevation.

**Q. And I take it you worked at Lehman -- well, for how long after July of '08 did you work at Lehman Brothers?**

A. Until the end. Until most of the employees were transferred to Barclays, U.S. employees.

**Q. And at the end, did you transfer over to Barclays yourself?**

A. Yes.

**Q. And when did you start work at Barclays?**

**HIGHLY CONFIDENTIAL - A. KIRK**

A. I don't remember the transfer date, to be honest with you. I worked there till the first week of November.

**Q. First week of November '08?**

A. Yes.

**Q. What positions did you hold at Barclays?**

A. I didn't have a position at Barclays.

**Q. Was there -- I know it was sort of tumultuous times. Was there any break in between leaving Lehman and going to Barclays, or did you just sort of start working at Barclays at the end of the Lehman --**

A. Whenever the actual HR records transferred.

**Q. Okay. Did you have a written employment agreement with Barclays?**

A. No.

**Q. Was any written employment agreement ever offered to you by Barclays?**

A. No.

**Q. Would you describe to me your compensation package at Lehman -- withdrawn. What was your compensation arrangement**



**HIGHLY CONFIDENTIAL - A. KIRK**  
**for Lehman when you returned in July of '08?**

A. I would, when I returned, I would receive salary.

**Q. And what was the salary?**

A. It was supposed to be \$400,000, but through an administrative mistake, I got paid \$225,000.

**Q. And what was your salary at Barclays?**

A. The same.

**Q. Did you have any arrangements or agreements for a bonus at Lehman?**

A. No.

**Q. Did you have any arrangements or agreements for a bonus at Barclays?**

A. Yes.

**Q. What were those?**

A. Let me clarify.

**Q. Sure.**

A. About two weeks after I arrived at Lehman, I was granted, without a request -- maybe two or three weeks, I don't remember the exact time -- equity under a program they had started that spring. They were granting equity to a lot of the senior executives, and I was

**HIGHLY CONFIDENTIAL - A. KIRK**

granted I think it was 750,000 shares of Lehman equity.

**Q. And what were your bonus arrangements or agreements with Barclays?**

A. About the end of October, I reached out to Bart McDade suggesting that perhaps Barclays could pay me a bonus before I left. About a week later, they informed me that they would pay me \$15 million in two separate installments.

**Q. And were those installments to be paid on the first and second anniversary of your Barclays tenure; was that the arrangement?**

A. No, it was November 15th and February -- sometime in February.

**Q. Did you receive either of those payments?**

A. Yes.

**Q. The first one, I take it?**

A. Both.

**Q. Both, okay.**

**Why did you leave Barclays?**

A. I had -- because I wanted to leave the sell side of the business, broadly, and move to

**HIGHLY CONFIDENTIAL - A. KIRK**

the buy side of the business.

**Q. Could you explain to me what you mean by that?**

A. Meaning I wanted to go work as a principal in a hedge fund or a money management firm.

**Q. Did you do that?**

A. I'm in the process of setting up a firm right now.

**Q. Before you went to work at Barclays, before the end of Lehman, had you had any discussions with anyone at Barclays about the prospects of working there after the Lehman sale was concluded?**

A. I was approached by Bob Diamond to see if I was interested in a job, broadly, as opposed to a specific job. I told him I wasn't.

**Q. Pardon me?**

A. I was not.

**Q. And when were you approached by Bob Diamond?**

A. At some point within the first week or two that they were -- I would say probably that week that they were negotiating to buy the firm.

**HIGHLY CONFIDENTIAL - A. KIRK**

If not that week, the week after.

**Q. Okay. We're going to spend a lot of time today talking about the negotiations on that point, so let me take this point to frame out some dates.**

I put before you a blank calendar which may help you with days of the week that we'll talk about, but when you talk about the week in which there were negotiations, could you tell me what week or weeks you're talking about?

A. The week of September -- Monday, September 15th through Friday, you know, through Sunday, September 21st.

**Q. And at what point during that week did Mr. Diamond talk to you about coming to work for Barclays?**

A. I don't remember if it was that week or the following week.

**Q. Again, just to give us a time point, the transaction we're talking about closed on September 22. Do you recall if it was before or after the closing?**

A. I don't recall.

**Q. Was it just you and Mr. Diamond in the**

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<p>1           <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2 conversation?</p> <p>3       A. Yes.</p> <p>4       <b>Q. And apart from this conversation with</b></p> <p>5 <b>Mr. Diamond, had you had discussions with anyone</b></p> <p>6 <b>about going to work for Barclays?</b></p> <p>7       A. No.</p> <p>8       <b>Q. And when you had the discussion with</b></p> <p>9 <b>Mr. Diamond, did he talk to you about a</b></p> <p>10 <b>compensation package?</b></p> <p>11       A. No.</p> <p>12       <b>Q. When did you first talk to anyone at</b></p> <p>13 <b>Barclays about a compensation package?</b></p> <p>14       A. First conversation I had with anybody</p> <p>15 at Barclays was the meeting I sat down with Rich</p> <p>16 Ricci where he told me what the</p> <p>17 severance/compensation packet bonus would be,</p> <p>18 which was in late October.</p> <p>19       <b>Q. Had you had any conversations with any</b></p> <p>20 <b>of your fellow Lehman employees about the topic</b></p> <p>21 <b>of compensation at Barclays?</b></p> <p>22       A. Bart McDade.</p> <p>23       <b>Q. Can you describe that conversation</b></p> <p>24 <b>with Mr. McDade?</b></p> <p>25       A. Yes. Several of my colleagues were --</p>	<p>1           <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2 who had signed employment agreements were</p> <p>3 resigning from the firm and receiving large</p> <p>4 payouts upon their leaving the firm, and I</p> <p>5 suggested to Bart that it would be fair if I was</p> <p>6 treated in a similar way, despite not having a</p> <p>7 written contract.</p> <p>8       <b>Q. And what did Mr. McDade say to you?</b></p> <p>9       A. He said he agreed and he would talk to</p> <p>10 Barclays about that. He was on point for those</p> <p>11 sorts of issues with Barclays.</p> <p>12       <b>Q. Do you know if he did talk to anyone</b></p> <p>13 <b>at Barclays about you in that regard?</b></p> <p>14       A. I assume he did.</p> <p>15       <b>Q. And why do you assume that?</b></p> <p>16       A. Because they approached me with a</p> <p>17 deal --</p> <p>18       <b>Q. Was the conversation --</b></p> <p>19       A. -- a couple weeks later.</p> <p>20       <b>Q. I beg your pardon.</b></p> <p>21               Was the conversation with Mr. McDade</p> <p>22 during the week of the negotiations between the</p> <p>23 15th and the 22nd?</p> <p>24       A. No, it was sometime in late October.</p> <p>25       <b>Q. Did you have conversations with anyone</b></p>
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<p>1           <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2 at Lehman during that week, the 15th through the</p> <p>3 22nd?</p> <p>4       A. No.</p> <p>5       <b>Q. Let me just put a full question so</b></p> <p>6 <b>that we have a clear record, okay?</b></p> <p>7       A. Yeah.</p> <p>8       <b>Q. Did you have conversations with anyone</b></p> <p>9 <b>during the week of the 15th to the 22nd about</b></p> <p>10 <b>compensation that would be paid to you at</b></p> <p>11 <b>Barclays after the 22nd?</b></p> <p>12       A. No.</p> <p>13       <b>Q. I think you referred a moment ago to</b></p> <p>14 <b>people receiving payouts when you left the firm.</b></p> <p>15 <b>What firm were you referring to?</b></p> <p>16       A. Barclays.</p> <p>17       <b>Q. And who were those people you were</b></p> <p>18 <b>referring to?</b></p> <p>19       A. Mike Gelband was one. I believe</p> <p>20 Kaushik Amin was another.</p> <p>21       <b>Q. Anyone else?</b></p> <p>22       A. Not that I recall directly.</p> <p>23       I'm sorry. Yeung Lee was another.</p> <p>24       <b>Q. Anyone else?</b></p> <p>25       A. That's all I can recall. There were</p>	<p>1           <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2 many people leaving Barclays at that time.</p> <p>3       <b>Q. Just as a general matter, when you say</b></p> <p>4 <b>there were many people leaving Barclays, are you</b></p> <p>5 <b>referring to former Lehman employees --</b></p> <p>6       A. Yes.</p> <p>7       <b>Q. -- who transferred?</b></p> <p>8       A. Yes.</p> <p>9       <b>Q. And then left Barclays?</b></p> <p>10       A. Yes.</p> <p>11       <b>Q. And if you know, sir, why were these</b></p> <p>12 <b>people who were leaving Barclays, Gelband, for</b></p> <p>13 <b>example, receiving payouts from Barclays on</b></p> <p>14 <b>their departure?</b></p> <p>15               MR. HUME: Objection. Calls for</p> <p>16 speculation.</p> <p>17       A. I don't know.</p> <p>18       <b>Q. Why did you get payments in the</b></p> <p>19 <b>amounts that you did from Barclays having worked</b></p> <p>20 <b>there for such a short period of time?</b></p> <p>21               MR. KELLEY: I'll make the same</p> <p>22 objection.</p> <p>23       <b>Q. You can answer, I think.</b></p> <p>24       A. I don't know.</p> <p>25       <b>Q. Did you talk to anybody about that?</b></p>

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A. No.

**Q. Were you surprised to receive payments in that amount from Barclays, having worked there for such a short period of time?**

A. No.

**Q. I may have been a bit confused about the time periods, but when you said you were to be paid 15 million by -- actually, just remind me, when did you leave Barclays?**

A. November, first week.

**Q. When we talked about the bonus to be paid to you, the \$15 million in total, I think you had told me it would be paid in November and then in February?**

A. Yes. Uh-huh.

**Q. You left before the February payment would have come due, correct?**

A. Yes.

**Q. Do you know why they paid you the second piece?**

A. It was agreed that they would pay me.

**Q. When was it agreed? At the time you left or at some time before that?**

A. When I was leaving, as long as I

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didn't compete with them or solicit their employees for six months, I was paid -- I would be paid those amounts of money.

**Q. Was the non-compete/non-solicitation in a written agreement?**

A. Yes.

**Q. Did you have a written agreement concerning your departure from Barclays?**

A. Yes.

**Q. That went beyond the non-compete and -- withdraw. That's a terrible question.**

**When did you sign the written agreement with Barclays?**

A. Sometime in November.

**Q. Do you have a copy of that agreement?**

A. I do.

**Q. Did you bring it with you?**

A. No.

Unless you brought it.

MR. ENRIGHT: No.

MR. GAFFEY: Just for the record, I should say I think it's probably called for by the subpoena. We don't have to have a colloquy about it now. I just want to make

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my record.

I think it was called for by the subpoena. I also think it would be called for by our document request to Barclays.

MR. HUME: I think it's from November, a different kind of agreement. That's the only reason. We'll look for it.

MR. GAFFEY: If you could, and if --

Can we go off the record for a minute? (Discussion off the record.)

BY MR. GAFFEY:

**Q. Now, when you met, Mr. Kirk, with Mr. Hume or people from his firm, did you talk about events during a time period other than the time you were employed by Barclays?**

MR. KELLEY: Objection. Privileged.

MR. GAFFEY: I think I can inquire to find out -- a yes or no will tell me whether or not I can press on the privilege point.

**Q. If you just answer yes or no.**

MR. KELLEY: No, I'll make the same objection.

**Q. When did you meet with the lawyers for Barclays?**

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A. Last Thursday.

**Q. Who was present?**

A. Mr. Hume and -- who was the other?

MR. KELLEY: If you know.

A. I don't remember that guy's name.

**Q. And I take it Mr. Kelley or people from his firm were there as well?**

A. Yes.

**Q. Anyone else other than lawyers from Mr. Kelley's firm or Mr. Hume's firm?**

A. No.

**Q. Did you review any documents? Just answer that yes or no, please.**

A. Yes.

**Q. Did any of those documents have the effect of refreshing your recollection about the events concerning the sale of assets from Lehman to Barclays?**

A. Some.

**Q. Which ones?**

A. I don't remember specifically.

**Q. Are there any that you remember specifically that refreshed your recollection about matters?**

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<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       A.   Not in particular.</p> <p>3       <b>Q.   In general?</b></p> <p>4       A.   Not in -- generally, yes.</p> <p>5       <b>Q.   Did those documents cover a time</b></p> <p>6 <b>period prior to -- on or prior to September 22?</b></p> <p>7       MR. KELLEY: I object to that.</p> <p>8       MR. GAFFEY: I'm not sure of the</p> <p>9       nature of the objection, David.</p> <p>10      <b>Q.   Can you answer it?</b></p> <p>11      MR. KELLEY: Privileged.</p> <p>12      MR. HUME: We would assert the same</p> <p>13      objection.</p> <p>14      MR. GAFFEY: Do you contend you have a</p> <p>15      privilege with this witness?</p> <p>16      MR. HUME: I think the objection -- I</p> <p>17      assume what you're questioning is to try to</p> <p>18      attack this privilege.</p> <p>19      MR. GAFFEY: I'm not attacking the</p> <p>20      privilege. I'm just trying to find out if</p> <p>21      you have a basis to assert it.</p> <p>22      Do you contend you have a privilege?</p> <p>23      MR. HUME: Yes, I think that your</p> <p>24      motion suggested that there were fiduciary</p> <p>25      breach claims that you were considering as</p>	<p>1       HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2       to senior Lehman officers and as part of</p> <p>3       your investigation of potential claims</p> <p>4       against Barclays, but the same theory would</p> <p>5       give rise to claims against the officers and</p> <p>6       against Barclays. So, yes, I think we do</p> <p>7       have a common interest privilege in that we</p> <p>8       both deny those claims.</p> <p>9       MR. GAFFEY: I'll leave that, but I</p> <p>10      don't want to have a colloquy on the record.</p> <p>11      I disagree.</p> <p>12      BY MR. GAFFEY:</p> <p>13      <b>Q.   Let's talk about that week, the week</b></p> <p>14 <b>in September that's brought us here. Can you</b></p> <p>15 <b>tell me, sir, as a general matter, did you play</b></p> <p>16 <b>any role in the negotiations of the agreement</b></p> <p>17 <b>between Lehman and Barclays that led to the sale</b></p> <p>18 <b>of assets to Barclays.</b></p> <p>19      (The witness confers with Mr. Kelley.)</p> <p>20      A.   Is the week you're referring to the</p> <p>21      15th through the 21st?</p> <p>22      <b>Q.   Yes. Well, let me reframe it because</b></p> <p>23 <b>you asked that question. At any point during</b></p> <p>24 <b>September of 2008, were you involved in any</b></p> <p>25 <b>discussions or negotiations with Barclays?</b></p>
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<p>1       <b>HIGHLY CONFIDENTIAL - A. KIRK</b></p> <p>2       A.   Yes.</p> <p>3       <b>Q.   When?</b></p> <p>4       A.   I was involved in discussions that</p> <p>5       went from Friday, the 12th of September, until</p> <p>6       Sunday, the 14th, of the transaction that</p> <p>7       ultimately failed, and I was asked to</p> <p>8       participate in the discussions, facilitate the</p> <p>9       discussions starting Friday morning, the 19th.</p> <p>10      <b>Q.   So if I understand your answer</b></p> <p>11 <b>correctly, you're not involved in any</b></p> <p>12 <b>discussions or negotiations with Barclays in the</b></p> <p>13 <b>period from the 15th through the 18th?</b></p> <p>14      A.   That is correct.</p> <p>15      <b>Q.   Okay. Describe for me, if you would,</b></p> <p>16 <b>generally the nature of what you did in</b></p> <p>17 <b>connection with the negotiations from the 12th</b></p> <p>18 <b>to the 14th, that is, from the Friday to the</b></p> <p>19 <b>Sunday?</b></p> <p>20      A.   Generally, I helped organize the due</p> <p>21      diligence of the assets of Lehman Brothers that</p> <p>22      I was responsible for specifically and helped</p> <p>23      coordinate with some of the other departments</p> <p>24      meetings that would take place with Barclays.</p> <p>25      In addition, I was down at the Federal</p>	<p>1       HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2       Reserve both Saturday and Sunday, so I</p> <p>3       participated in probably two different</p> <p>4       discussions with Barclays on Saturday and</p> <p>5       Sunday.</p> <p>6       <b>Q.   And what was the -- actually, if you</b></p> <p>7 <b>don't mind, just so we have some term we can use</b></p> <p>8 <b>and I don't have to keep saying it this way,</b></p> <p>9 <b>could you give me, you referred to the assets</b></p> <p>10 <b>you were responsible for specifically. What</b></p> <p>11 <b>were those assets called?</b></p> <p>12      A.   The global principal business.</p> <p>13      <b>Q.   What was the nature of the transaction</b></p> <p>14 <b>that was being discussed from the Friday and the</b></p> <p>15 <b>Saturday and the Sunday, the 12th through the</b></p> <p>16 <b>14th?</b></p> <p>17      A.   The nature of that transaction was</p> <p>18      Barclays was going to buy all of Lehman</p> <p>19      Brothers.</p> <p>20      <b>Q.   Do you know what the structure of that</b></p> <p>21 <b>transaction was? Was it an asset purchase?</b></p> <p>22 <b>Stock purchase? Did you have any sense of that?</b></p> <p>23      A.   It was a -- I'm not an M&amp;A expert, but</p> <p>24      I believe they were going to assume the debt and</p> <p>25      other contractual obligations of Lehman</p>



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Brothers. They were going to not assume the preferred stock of Lehman Brothers and they were going to pay a nominal, less than a dollar, per share price for part of the equity and they were going to spin off the real estate and private equity positions into a new company which would be capitalized with debt by a consortium of lenders and have as its equity capital the preferred stock of Lehman Brothers and the equity.

**Q. And you said that that transaction failed. Why did that transaction fail, do you know?**

A. I was told by Bart McDade that the FSA had turned down the application to close that transaction.

**Q. When were you told this by Mr. McDade?**

A. Sunday around noon.

**Q. Now, did you have any role in those negotiations, again I'm on the 12th through the 14th, other than as you described, the sense I'm getting is primarily involved with due diligence for the global principal business.**

A. Yes, we had -- I spent most of my time

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trying to coordinate due diligence with our principals and the rest of the street, meaning Goldman Sachs, Citigroup, First Boston, et cetera, around the value of those assets which they were going to make a loan to the spun-off company.

**Q. And were Barclays personnel involved in that process?**

A. Not in the due diligence process, no.

**Q. Were you in touch with Barclays personnel about this due diligence process?**

A. There were some joint meetings that were arranged between Goldman Sachs and Citigroup as point for the street and Barclays and Lehman Brothers together. Barclays personnel were obviously in those meetings.

**Q. To your knowledge, at any point in that period from Friday to Sunday were people from Barclays given an opportunity to review Lehman's books for due diligence purposes?**

A. Yes, I believe they continued to do due diligence over the weekend.

**Q. And did you have any involvement in that project, that process, giving access to**

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**Lehman's books to personnel from Barclays?**

A. I don't recall specifically, but probably. We were down at the Federal Reserve in rooms across the hallway.

**Q. During the period from Friday, the 12th, through Sunday, the 14th, were you dealing with any particular people at Barclays who you could name?**

A. Archibald Cox. Bob Diamond. Rich Ricci. Michael Klein, as their agent.

**Q. Anyone else?**

A. Those are the ones I recall.

**Q. And was there a principal -- were there a group of people you would describe as the principal negotiators for Lehman? Again, I'm in the 12th through the 14th.**

A. Mark Shafir, who was head of M&A; Bart McDade, who was president; and via telephone, Dick Fuld.

**Q. Anyone else you would characterize, that you would describe as Lehman's principal negotiators?**

A. I was the advisor. I believe, although I don't know for sure, I don't have any

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direct knowledge, but I have secondhand knowledge that Skip McGee was involved.

**Q. Anyone else?**

A. That's all I know.

**Q. What's the basis of your secondhand knowledge that McGee was involved?**

A. Mark Shafir would call Skip from the Federal Reserve.

**Q. After that transaction failed, did there come a time when you learned that negotiations had begun again between Barclays and Lehman?**

A. Late Sunday night sometime between 11 and 2 in the morning.

**Q. Would you describe that to me? How did you learn it? Where were you when you learned it?**

A. I believe I was in Bart McDade's office, and he mentioned that Barclays had -- they had had contact with Barclays and Barclays was interested -- "they" meaning Dick himself, Skip and Barclays was interested in pursuing an acquisition of the U.S. businesses of Lehman Brothers.

1 HIGHLY CONFIDENTIAL - A. KIRK  
2 Q. Did he tell you anything more than  
3 that? Who called who or anything that was said  
4 in the conversation?

5 A. No, nothing more than that.

6 Q. Who else was present when you learned  
7 this from Mr. McDade on Sunday night?

8 A. I don't recall specifically, but  
9 probably Mike Gelband.

10 Q. I should tell you, and I should have  
11 said this upfront, I don't want you, please, to  
12 speculate during the day.

13 A. Okay.

14 Q. Once or twice you've answered by  
15 saying "probably," and it's common usage, but if  
16 you can give me your memory of things, as you  
17 have been, tell me when you'd have to speculate,  
18 okay --

19 A. Okay.

20 Q. -- so the record will be clear.

21 So do you know if Mr. Gelband was in  
22 that conversation?

23 A. I don't recall.

24 Q. Now, do you know if that conversation  
25 took place before or after Lehman filed for

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2 bankruptcy protection?

3 A. I don't remember exactly when the firm  
4 filed, but that's a matter of record, so ...

5 Q. Well, do you know, do you remember  
6 when you learned, first learned the firm was  
7 going to file? Withdrawn.

8 Did you know before the firm filed  
9 that it was going to do so?

10 A. Yes.

11 Q. When did you learn, first learn that  
12 the firm was going to file?

13 A. After the board meeting on Sunday  
14 night, approximately 8 o'clock.

15 Q. Did you attend that board meeting?

16 A. No.

17 Q. From whom did you learn the substance  
18 of the board meeting?

19 A. I don't recall.

20 Q. And the conversation with Mr. McDade  
21 about renewed negotiations with Barclays, did it  
22 take place after the board meeting?

23 A. Yes.

24 Q. Did Mr. McDade ask you to do anything  
25 in connection with these renewed negotiations?

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2 A. No.

3 Q. Did anyone ask you to do anything in  
4 connection with these new renewed negotiations?

5 A. No.

6 Q. Did there come a time when you learned  
7 the negotiations --

8 A. I'm sorry.

9 Q. Beg your pardon. Go ahead.

10 A. No, not that evening.

11 Q. Not that evening, okay.

12 Did come a time where you were asked  
13 to perform some tasks or do something in  
14 connection with the negotiations?

15 A. Yes.

16 Q. And when did that happen?

17 A. Late Thursday night, the 18th of  
18 September.

19 Q. I'm coming there.

20 Did there come a time when you learned  
21 there was an agreement reached between Lehman  
22 and Barclays concerning the sale of Lehman  
23 assets to Barclays?

24 A. Yes.

25 Q. When did you learn that?

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2 A. Sometime Tuesday.

3 Q. From whom did you learn that?

4 A. I don't recall.

5 Q. Did you learn whether that agreement  
6 was reduced to a writing?

7 A. No.

8 Q. Have you ever seen any -- the written  
9 agreement, have you ever seen a written  
10 agreement between Lehman and Barclays concerning  
11 the asset sale?

12 A. No.

13 Q. So you learn on maybe the Tuesday that  
14 there's a deal between Lehman and Barclays, and  
15 then -- and on late Thursday night you're asked  
16 to participate in some way.

17 How are you spending your time between  
18 the Tuesday and Thursday?

19 A. I'm spending, between really Sunday  
20 night and Thursday, I was spending all my time  
21 attempting to help coordinate the risk reduction  
22 and risk management of the firm so it could  
23 survive for a few days to get to closure.

24 Q. Now, did those -- now I'm in the  
25 period from, that you just described, from the

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**Sunday up until Thursday.**

A. Uh-huh.

**Q. Are you working with any people from Barclays in connection with those activities?**

A. I don't recall specifically working with Barclays employees. Just Lehman employees.

**Q. Were you in communications with Barclays employees?**

A. Not directly. I would have communicated to our finance staff and they would have communicated to Barclays.

**Q. And who on the finance staff?**

A. Ian Lowitt, Paolo Tonucci.

**Q. Did you also deal with Martin Kelly?**

A. Maybe once, twice.

**Q. When you learned about a deal between Lehman and Barclays having been concluded, what was your understanding of the nature of the deal?**

A. That I was -- that it was going to be an asset purchase deal and that they were going to purchase some amount of assets and assume the obligations of Lehman, some of the limited obligations of Lehman Brothers.

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**Q. Did you have an understanding of the asset components that were going to be purchased?**

A. No.

**Q. Did you ever learn what asset components were going to be purchased?**

A. Are you specifically asking about the deal that was struck on that Tuesday?

**Q. Yes.**

A. No.

No, let me be more specific.

**Q. Sure.**

A. I got an e-mail that said they were going to purchase the building and a pool of other broadly defined assets.

**Q. Who did you get that e-mail from?**

A. Ajay Nagpal.

**Q. Could you spell that so we have it in the record, please?**

A. A-J-A-Y N-A-G-P-A-L.

**Q. What understanding did you have of the constituent parts of the pool of the defined assets apart from the building?**

A. None.

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**Q. Did you have an understanding who the principal negotiators for Lehman of that transaction were?**

A. I understood it to be Mark Shafir, Skip McGee.

**Q. Did Mr. McDade have any role in those negotiations, to your understanding?**

A. I believe he did.

**Q. But you wouldn't describe him as one of the principal negotiators?**

A. He might have been.

**Q. Do you have a reason to think he might have been? Is it that --**

A. He was the president of the firm.

**Q. But other than his title, do you have a basis for thinking he might have been one of the principal negotiators?**

A. No.

**Q. Did you talk to Shafir about the negotiations?**

A. No.

**Q. Did you talk to McGee about the negotiations?**

A. No.

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**Q. Did you have an understanding of the nature of the liabilities that Barclays was going to assume under the agreement?**

A. Not at the time.

**Q. Did there come a time when you did gain an understanding of the liabilities Barclays was going to assume under the agreement?**

A. A very cursory understanding on Friday.

**Q. That's on Friday, the 19th?**

A. Correct.

**Q. From whom did you get that understanding?**

A. Paolo Tonucci.

**Q. What did Mr. Tonucci tell you in that regard?**

A. That there were two categories. One was assumption of certain trade liabilities and the other was the assumption of compensation liabilities, and that they together totaled somewhere over \$4 billion.

**Q. Did you talk to anyone other than Mr. Tonucci about these assumed liabilities that**



**HIGHLY CONFIDENTIAL - A. KIRK**  
**totaled somewhere over \$4 billion?**

A. During Friday, the amount of those liabilities were referenced several times by Paolo, who was attempting to accurately estimate them, and by Barclays in their description of the deal later in the afternoon.

**Q. Let's go back to the earlier part of the week. I swear I'm getting to Thursday and Friday.**

A. That's all right.

**Q. Now I'm still sort of in the early part of the week.**

**Were you asked to be involved in any assessment of the value of the pool of securities that was to be sold?**

A. No.

**Q. Did you ever come to understand that the agreement between Lehman and Barclays included a loss, an overall loss against the amount at which those assets were carried on Lehman's books?**

A. No.

**Q. Did you ever at any time have an understanding that that agreement involved a**

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**discount of any kind given to Barclays against the amount shown on Lehman's books of those assets?**

A. No.

**Q. Apart from your counsel and counsel from Mr. Hume's firm, have you spoken to anybody about that topic?**

A. No.

**Q. When you learned about the sale of a pool of assets, and again, apart from the real estate on Tuesday, did you have an understanding it was to be sold at book value?**

A. I didn't have an understanding one way or the other.

**Q. So on the Monday, the Tuesday, the Wednesday and during the day on Thursday, if I understand what we've talked about so far correctly, you're essentially involved in managing risk?**

A. Yes.

**Q. And the purpose, apart from the inherent reason for doing it --**

A. Keep the firm funded.

**Q. Did you have an understanding, while**

**HIGHLY CONFIDENTIAL - A. KIRK**  
**you were doing that, of how long you needed to do that? What the timetable was for things?**

A. We knew we were -- I believe they were trying to schedule a meeting with the bankruptcy court on Friday evening, Friday afternoon.

It was really a day-to-day operation.

**Q. And during that day-to-day operation, did any of your activities involve entering into or addressing repurchase agreements, repos?**

A. Some of them.

**Q. Could you describe that for me? What was the nature of your activities in connection with repos?**

A. The firm had a number, a large number of clients whose assets had been trapped under repurchase agreements in the European subsidiaries, so we spent some time trying to figure out how we were going to help solve those issues. That was a big piece of it.

And then we were also trying to shrink the matched book because it used liquidity at the firm as a way to raise liquidity, so where you would finance client positions with other client's money.

**HIGHLY CONFIDENTIAL - A. KIRK**

**Q. Financing of client positions with other client's money; is that what you're talking about when you talk about the matched book?**

A. Yes.

**Q. And by shrinking the matched book, you're reducing that level of activity of --**

A. Yes.

**Q. -- using --**

A. And you're -- it would -- I was told it would free up liquidity.

**Q. And did you have any involvement, sir, in connection with the Repurchase Agreement that Lehman had with the Fed?**

A. Only -- my only involvement there was I was at the Fed when they told us Sunday evening that they would lend us money to pay back the tri-party repo lenders the following morning.

**Q. And did Lehman enter into a Repurchase Agreement with the Fed for that purpose, do you know?**

A. Yes, they did.

**Q. Were any of your activities devoted to**

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**HIGHLY CONFIDENTIAL - A. KIRK**  
the making of that Repurchase Agreement with the Fed?

A. No.

**Q. Did there come a time when the Fed made it known it wanted to come out of that Repurchase Agreement, to your knowledge?**

A. Yes.

**Q. Describe to me how you came to learn that.**

A. I don't recall specifically who told me.

**Q. As a general matter, tell me what you remember about learning that the Fed wanted to get out of the Repurchase Agreement with Lehman?**

A. At some point on Wednesday, the Fed said that they wanted to get paid back, I believe it was Wednesday, and Lehman had to figure out how to arrange alternative financing, and there was only one party that would provide that financing and that was Barclays.

**Q. And what did you do in connection with those activities, if anything?**

A. I was not a repo expert. I didn't -- I was not -- I'm not a repo expert. I did not

**HIGHLY CONFIDENTIAL - A. KIRK**  
participate in those.

**Q. How did you learn about those activities? From whom?**

A. I don't recall specifically.

**Q. Do you have any general recollection?**

A. Probably the finance staff.

**Q. And that would be Tonucci?**

A. Ian Lowitt or Tonucci, one or the other.

MR. GAFFEY: Can we take a five-minute break?

THE WITNESS: Sure.

(Recess; Time Noted: 10:21 A.M.)

(Time Noted: 10:29 A.M.)

BY MR. GAFFEY:

**Q. In a question I asked you a little while ago, Mr. Kirk, you clarified by saying, "You mean the agreement made on Tuesday?" Did there come a point where you learned that the deal had changed?**

A. Friday.

**Q. Okay. Here we are. Tell me about Friday.**

**Actually, let me just back up. I**

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**HIGHLY CONFIDENTIAL - A. KIRK**  
think you also told me there was a conversation late on Thursday night that began your Friday activities?

A. Yes.

**Q. Okay. Let's talk about that one first. Who's the conversation with, where are you, and what's the content of the conversation?**

A. I'm at home. I get a call from Bart McDade. He informs me that Mark Shafir has left Lehman Brothers and that he needs some help wrapping up the Barclays deal the following day.

**Q. Had Shafir left on the Thursday?**

A. I believe so.

**Q. You described Shafir as one of the principal negotiators. As of the Thursday, to your knowledge, has he now gone?**

A. Yes.

**Q. Did McDade have anything to say about that topic?**

A. He said he went -- he quit and he went to work at Citigroup.

**Q. Other than telling you that Shafir had quit and gone to work at Citigroup, did Mr. McDade have anything to say about**

**HIGHLY CONFIDENTIAL - A. KIRK**  
Mr. Shafir's departure --

A. No.

**Q. -- on this Thursday?**

A. No.

**Q. Did Mr. McDade say anything about the departure, Shafir's departure having any impact on the deal?**

A. He said that, given his departure, he would need extra help and he asked for my help.

**Q. What did he ask you to do?**

A. That evening he did not specify what he wanted me to do.

**Q. Tell me what Mr. McDade said and what you said in that conversation on Thursday night, as best you remember.**

A. He said that Mark Shafir has quit, gone to Citigroup, I need some help wrapping this up tomorrow, can you help me, I said yes.

**Q. That's the entire conversation as you remember it?**

A. Yes.

**Q. Did you ask him what he needed you to do?**

A. I think I asked him, Do you want me to

**HIGHLY CONFIDENTIAL - A. KIRK**  
come in the office tonight? He said no, he was already home. I said, What time do you want me to come in the morning? And he said, you'll get an e-mail about an early morning meeting.

**Q. Did you speak to anyone else that Thursday night about the deal after you spoke to Mr. McDade?**

A. Not that I recall.

**Q. So let's just get through the rest of Thursday night, okay? After you have the conversation with Mr. McDade, he says he needs your help, there will be an early morning meeting.**

**Did you do anything else with respect to the transaction on the Thursday night?**

A. I don't recall specifically or generally.

**Q. On the Thursday, sir -- I'll show you a document about this in a second -- do you recall reaching out to others in the firm, including Kaushik Amin and Gerald Donini and Eric Felder, to ask them to put together information to -- that would be necessary to portray a fire sale liquidation of the**

**HIGHLY CONFIDENTIAL - A. KIRK**  
**securities?**

A. I may have done so by e-mail.

**Q. Okay. I'll show you the e-mail, but first, if you don't mind, what's your independent recollection of that, if you have any?**

A. My independent recollection is that I got an e-mail for a scheduled meeting the following day and I got a request, I didn't recall when it was specifically, to help organize a valuation exercise on behalf of Barry Ridings. I didn't recall whether that was Thursday night or Friday morning.

**Q. And who is Barry Ridings?**

A. A Lazard restructuring banker hired by the firm to testify in bankruptcy court.

**Q. And who made this request of you?**

A. I don't recall specifically who asked me to do that.

**Q. I'm showing you, Mr. Kirk, what has been marked at a prior deposition as Exhibit 3 an e-mail from you to an address 4955214@archwireless.net. Is that your wireless account?**

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A. I believe we've determined that was a wireless account that was used in the late '90s when there were wireless pagers, if you recall those devices.

**Q. Okay. Uh-huh.**

A. But had been inoperative but still alive in the system.

**Q. Okay. You're about to solve one of the great mysteries of this case.**

A. Yeah, we had --

**Q. Did you have that account? Are you sending it to your home e-mail?**

A. I don't -- no, this is auto-forwarded by the computers.

**Q. Okay.**

A. So like they auto-forward to your BlackBerry, these are things that auto-forward from the --

**Q. You would love it right now if I said I have nothing further, but that wasn't the key question, so let me go to the exhibit that I showed you.**

A. We had to ask ourselves the same question when we saw this.

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**Q. Okay. Take a minute to look through what was marked as Exhibit 3, sir. I have a couple questions for you about it. (Document review.)**

A. Okay.

**Q. In this, who is Daniel Flores, the man from whom the underlying e-mail is sent?**

A. I believe Daniel worked for Mark Shapiro. It's indicated he worked in the restructuring group that was run by a fellow named Mark Shapiro at Lehman.

**Q. And in the e-mail, you see that Mr. Flores recounts, "Alex Kirk suggested we contact each of you to help us understand on a theoretical basis what would happen in a fire sale liquidation of the securities that are being transferred to Barclays as part of the proposed transaction."**

**Did you have a conversation or communication with Mr. Flores about that topic?**

A. This indicates I must have.

**Q. Apart from seeing it written on this e-mail, do you have any recollection?**

A. I don't recall.

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<p>1           HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2       <b>Q. Does this e-mail refresh your</b></p> <p>3 <b>recollection in any way of a communication with</b></p> <p>4 <b>Mr. Flores about that topic?</b></p> <p>5       A. Again, I assume that I must have</p> <p>6 talked to him.</p> <p>7       <b>Q. But again, sir, apart from seeing it</b></p> <p>8 <b>on the page in front of you, do you have a basis</b></p> <p>9 <b>for that assumption?</b></p> <p>10      A. No.</p> <p>11      <b>Q. You said that that was -- well, let me</b></p> <p>12 <b>continue down into Mr. Flores' e-mail where he</b></p> <p>13 <b>talks about, "We will be leaving on your desks a</b></p> <p>14 <b>list of the top 100 positions in each of your</b></p> <p>15 <b>area's expertise." Did that exercise take</b></p> <p>16 <b>place, to your knowledge?</b></p> <p>17      A. Yes, I believe it did.</p> <p>18      <b>Q. And what was the result of the</b></p> <p>19 <b>exercise? Was there a fire sale liquidation</b></p> <p>20 <b>scenario put together?</b></p> <p>21      A. So these positions were delivered to</p> <p>22 each of the recipients of this e-mail, Kaushik</p> <p>23 Amin, Charlie Spero, Eric Felder, Gerry Donini,</p> <p>24 were the various business heads in charge of</p> <p>25 parts of fixed income or equities, and they</p>	<p>1           HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 would have been -- had those delivered early in</p> <p>3 the morning, and then we were attempting to have</p> <p>4 an 11 o'clock meeting to go over the findings of</p> <p>5 their -- their assumptions and analysis about</p> <p>6 the value of those positions.</p> <p>7       <b>Q. And did that meeting take place?</b></p> <p>8       A. Yes, it did.</p> <p>9       <b>Q. Were you at it?</b></p> <p>10      A. Yes.</p> <p>11      <b>Q. Who was at the meeting?</b></p> <p>12      A. Mike Gelband, Kaushik Amin, Charlie</p> <p>13 Spero and Gerry Donini, and Daniel Flores was</p> <p>14 there as well as Gerry Reilly.</p> <p>15      <b>Q. Was James Seery there?</b></p> <p>16      A. He might have been. I recall he was</p> <p>17 there.</p> <p>18      <b>Q. You do recall he was there?</b></p> <p>19      A. I recall he was there.</p> <p>20      <b>Q. Was a determination made about</b></p> <p>21 <b>liquidation value?</b></p> <p>22      A. No. The data had been delivered in --</p> <p>23 the position data had been delivered in a way</p> <p>24 that, given the short period of time, a couple</p> <p>25 hours, the business heads were not able to</p>
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<p>1           HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 determine in any comprehensive way the values.</p> <p>3 So we adjourned the meeting with the -- with a</p> <p>4 plan that Barry Ridings would talk to each of</p> <p>5 these individuals separately closer to the end</p> <p>6 of the day when they might have a better sense.</p> <p>7       <b>Q. Do you know if Mr. Ridings did that?</b></p> <p>8       A. I don't know that.</p> <p>9       <b>Q. Did he speak to you at all?</b></p> <p>10      A. Not about this topic. I saw him later</p> <p>11 in the day in a meeting.</p> <p>12      <b>Q. Let me just back up a little bit. Did</b></p> <p>13 <b>Ridings know you were organizing this project?</b></p> <p>14      A. Yes.</p> <p>15      <b>Q. Would he have known you're the contact</b></p> <p>16 <b>guy on it?</b></p> <p>17      A. Yes. I probably called him and told</p> <p>18 him call these people directly.</p> <p>19      <b>Q. Did you have any conversations that</b></p> <p>20 <b>you recall with Mr. Ridings about the need for a</b></p> <p>21 <b>liquidation scenario to be analyzed?</b></p> <p>22      A. I assume he clarified the reasoning as</p> <p>23 a test for the court.</p> <p>24      <b>Q. When you say you assume that, what's</b></p> <p>25 <b>the basis of that assumption?</b></p>	<p>1           HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2       A. I vaguely recall having a conversation</p> <p>3 with him.</p> <p>4       <b>Q. Let's go to the early morning of</b></p> <p>5 <b>Friday, the 19th. You spoke a moment ago about</b></p> <p>6 <b>getting a call from Mr. McDade. Shafir's quit.</b></p> <p>7 <b>He asked for your help, can you come to meet</b></p> <p>8 <b>with him in the morning. Did you do that?</b></p> <p>9       A. Yes.</p> <p>10      <b>Q. And where was the meeting?</b></p> <p>11      A. It was a -- I believe it was in my</p> <p>12 office.</p> <p>13      <b>Q. In your office, sir?</b></p> <p>14      A. Yes.</p> <p>15      <b>Q. Who was in attendance?</b></p> <p>16      A. Ian Lowitt, Chris O'Meara, Gerry</p> <p>17 Reilly, Paolo Tonucci. I think that was it.</p> <p>18      <b>Q. Was Mr. McDade there?</b></p> <p>19      A. I don't believe, no, I don't believe</p> <p>20 he was there.</p> <p>21      <b>Q. Now, in your conversation with</b></p> <p>22 <b>Mr. McDade the night before, he had told you</b></p> <p>23 <b>Shafir quit, he told you he needed your help,</b></p> <p>24 <b>you offered to come in, he said come in in the</b></p> <p>25 <b>morning, if I remember your testimony right, and</b></p>



**HIGHLY CONFIDENTIAL - A. KIRK**  
that's not what governs, that's basically the topics you covered with McDade on Thursday night.

So here you are in a meeting with Lowitt, O'Meara, Reilly and Tonucci. Do you learn more at the meeting about the nature of the help that you're going to have to give?

A. They broadly outlined the first transaction. That was a quick summary. Then we discussed an issue that had come up earlier that morning around JPMorgan as our clearing bank shutting down Lehman's DTC account and what effect that would have on the transaction as planned.

**Q. Now, you referred to -- you said they broadly outlined the first transaction. By the Friday morning, is it your understanding there's a second transaction, a subsequent transaction?**

A. By the time we had this meeting --

**Q. Uh-huh.**

A. -- it was my view, my opinion, that there would have to be a reworking of the transaction because a vast majority of those securities that had been planned for transfer

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were held at JPMorgan. There was a -- and JPMorgan had a dispute of some sort about the transfer of the repo with Barclays, which was described to me by Mike Keegan, and in addition to that, they shut down Lehman's -- they closed down Lehman's DTC account, which led me to believe that JPMorgan would not cooperate and transfer the aforementioned securities to Barclays on that Friday.

**Q. When had you spoken to Mike Keegan?**

A. I got up and I went to the office about 5 A.M. and I ran into him about 5:30 in the morning.

**Q. Had you met Mr. Keegan before?**

A. I had met him the week before during the due diligence process.

**Q. So you say "they," that's some combination of Lowitt, O'Meara, Reilly and Tonucci, broadly outlined the first transaction to give you a quick summary?**

A. Yes.

**Q. How did they summarize -- tell me what you remember about their broad outline of the first transaction, the quick summary that they**

**HIGHLY CONFIDENTIAL - A. KIRK**  
gave you.

A. They summarized it as a purchase of the building, purchase of assets, and an assumption of this 4 billion, 4 and a quarter billion dollars in liabilities.

That discussion ended very quickly because of my belief that that transaction, given what had just transpired -- what I had learned from Keegan and the action that JPMorgan had taken, that I believe that they would act as a hostile party towards the closing of this transaction and that whatever had taken place before was irrelevant.

**Q. Did Mr. Tonucci tell you anything other than there was an assumption of liabilities in an approximate amount of 4 and a quarter billion for compensation of payables?**

A. No.

**Q. Did you have any knowledge as to how that number came to be determined?**

A. No. I was not concerned with that part of the transaction.

**Q. I'm sort of away from the Friday meeting for a moment.**

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A. No.

**Q. At any point did you come to an understanding as to how those, those components of assumed liabilities came to be calculated?**

A. No. No.

**Q. When the transaction, the first transaction was outlined to you by Tonucci, O'Meara, Reilly and Lowitt, or some combination, did you have an understanding as to where the assets would come from to fund those assumed liabilities?**

A. I believe there was a schedule, one-page schedule, which I think you have, that broadly gave an asset and liability balance sheet.

**Q. Have you ever seen that schedule?**

A. Yes.

**Q. When did you first see that schedule?**

A. I believe it was that morning. It was that morning.

**Q. Apart from the schedule, did you look at any other documents that morning?**

A. No.

**Q. I'm putting before you what previously**

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has been marked as Deposition Exhibit 19.

A. Yes, that's the schedule.

Q. And the schedule that you saw that morning was the one with the annotation in the upper right-hand corner "9/16/08, Final SB"?

A. Uh-huh.

Q. Do you remember that?

A. Yes.

Q. Okay. Who gave you the schedule?

A. One of the gentleman.

Q. Do you recall which one?

A. No.

Q. Did anybody tell you anything about the schedule?

A. They briefly described it as an asset sale that was approximately this size of this characteristics of the category of assets that they were going to buy, category of liabilities that they were going to assume, including financing liabilities and the aforementioned cure payment and comp.

Q. When you refer to the financing liabilities, are you just sort of broadly describing the liabilities opposite the

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particular assets in ST borrowings, government and agencies?

A. Yes.

Q. The ones that add up to 33.9?

A. Well, in addition, there's the 34.5 below that.

Q. For collateralized short-term funding, right?

A. Yes.

Q. Now, did you have an understanding when you were shown this schedule of where the values for assets -- from where the values for assets were derived?

A. I don't recall. We quickly moved on from this.

Q. Did whoever described the schedule to you, did they give you any description of the role that any of that schedule played in the first transaction?

A. They described it as the template for the first transaction.

Q. And do you know who put together the schedule that was the template for the first transaction? Did they tell you that?

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A. No.

Q. Did you ask?

A. No.

Q. Now, present at the meeting was Lowitt, O'Meara, Reilly and Tonucci. Was anybody participating by telephone?

A. I don't recall.

Q. Was there any participation in that Friday morning meeting by anybody from Barclays?

A. No.

Q. So they broadly outlined the first transaction. They tell you the problem with JPM, one of them or some combination of them.

What happens next in that meeting?

A. We break up. I tell them that I'm going to go try to shepherd the valuation process that I have been asked to follow up on for this 11 o'clock meeting and that I'm going to try to arrange a meeting with the senior executives at Barclays to explain to them what my view was, that this transaction as outlined couldn't be closed on that Friday night, which they agreed with.

Oh, I tell them I'm first going to go

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inform senior Lehman executives, Bart and Dick, of this problem.

(Mr. Kelley confers with the witness.)

A. I'm sorry, just to clarify, my assumption about this being problem -- this transaction being problematic was agreed to. The basis for that worry was verified by or agreed to by Ian Lowitt and Paolo Tonucci in that meeting.

Q. As I understand it, your primary activities for the week until this Friday morning meeting had been in risk management --

A. Uh-huh.

Q. -- had been in shrinking the matched book, keeping the firm alive so that the Friday hearing had some possibility of succeeding, is that a fair summary?

A. Yes.

Q. And you're called into this meeting on Friday morning and told that the transaction that's been on the table all week can't go forward because of this problem. This may seem an odd question, sir, but why are you now the guy that has to call Barclays and call senior

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1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 **management? Did you have an understanding of**  
3 **why you're the lucky winner of that**  
4 **responsibility?**

5 A. Because I volunteered. Yeah, I --

6 **Q. Did you have --**

7 A. Believe me, I almost had a heart  
8 attack just thinking about that.

9 (Mr. Kelley confers with the witness.)

10 A. That's true. In addition to Mark  
11 Shafir had left the firm, so ...

12 **Q. That's sort of implicit in my**  
13 **question. Why are you the guy who has to step**  
14 **up to the plate when Shafir leaves? Why not**  
15 **McGee? Why not Tonucci? Why not Lowitt?**

16 A. Because Bart trusted me.

17 **Q. So did you go and inform more senior**  
18 **Lehman executives of the issues of the problem?**

19 A. Yes.

20 **Q. Okay. Tell me about that. Who did**  
21 **you contact and what did you tell them, what did**  
22 **they say to you?**

23 A. I contacted Bart, I don't recall who  
24 else was in the meeting exactly, but I walked  
25 in, and there were others, I don't remember who

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1 **HIGHLY CONFIDENTIAL - A. KIRK**  
2 **being there, or are you assuming again, because**  
3 **of his role, his title, that he might have been?**

4 A. Yes, I'm assuming because of his title  
5 he might have been.

6 **Q. But you do recall talking to McDade**  
7 **about it?**

8 A. Yes.

9 **Q. Do you recall anyone else other than**  
10 **McDade to whom you spoke?**

11 A. No.

12 **Q. And what did Mr. McDade say?**

13 A. He said we should have a sit-down with  
14 the Barclays senior team and we should explain  
15 our point of view on this ASAP.

16 **Q. And what happened next?**

17 A. We had a meeting with Bart, myself,  
18 and then it was Michael Klein, Rich Ricci, and  
19 Mike Keegan from Barclays.

20 **Q. Where was the meeting?**

21 A. It was in an office on 31 that  
22 Barclays was using as temporary space.

23 **Q. And who's there from the Lehman side**  
24 **of the table?**

25 A. Bart and I were there.

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1 **HIGHLY CONFIDENTIAL - A. KIRK**

2 exactly, Fuld, most likely, that the assets and  
3 liabilities that had been assumed to be  
4 transferred in the first transaction were all  
5 held in custody or had to be cleared through  
6 JPMorgan, and because JPMorgan had taken this  
7 hostile action, there was a dispute, which I  
8 didn't understand the exact nature of, with the  
9 transfer of collateral between Barclays and --  
10 between the Fed through JPMorgan to Barclays.

11 I knew at a very high level there was  
12 a dispute between the two firms as to what  
13 collateral was accept -- what collateral was  
14 transferred and what collateral was left at  
15 JPMorgan, and I knew that JPMorgan had shut down  
16 Lehman's DTC account and failed all the  
17 settlements on that Friday, and a combination of  
18 those two pieces of information led me to  
19 believe that JPMorgan wouldn't transfer these  
20 assets on this schedule and liabilities, both  
21 sides, in any normal course.

22 **Q. And when you reported this to McDade,**  
23 **you said -- withdrawn. You said Fuld was there,**  
24 **most likely.**

25 **Do you have a recollection of him**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**

2 **Q. Anyone else?**

3 A. Ian was there as well, I'm pretty  
4 sure.

5 **Q. Was Tonucci there?**

6 A. I don't remember.

7 **Q. Do you recall whether or not with**  
8 **regard to which ones there were, do you recall a**  
9 **bigger meeting than that, or is this the**  
10 **assembly of people that you remember?**

11 A. It was an assembly of no more than ten  
12 people total.

13 MR. GAFFEY: Can we go off the record  
14 for a minute?

15 (Discussion off the record.)

16 (Recess; Time Noted: 10:59 A.M.)

17 (Time Noted: 11:09 A.M.)

18 BY MR. GAFFEY:

19 **Q. We were, before the break, we were at**  
20 **this Friday morning meeting, and so I want to go**  
21 **through in as much detail as I can what happened**  
22 **at that meeting and who said what.**

23 I have a general sense that the JPM  
24 problem has arisen. Did you have a sense, was  
25 there any discussion about the JPM problem being



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**related in any way to the Repurchase Agreement with Barclays?**

A. Yes.

**Q. Describe that for me. What was your understanding?**

A. So, to be clear, I'm not an expert, was not an expert on repo, so I was learning things for the first time that day that I didn't understand how they actually worked prior to that. So I got what was a cursory as opposed to a detailed explanation of the issue, but as I understood it from the way that Mike Keegan explained it to me was that the Fed had been providing a repo for Lehman Brothers earlier in the week of approximately \$50 billion, that the Fed had made it known that they wanted to be repaid on that repo, and that Barclays had agreed to assume that repo obligation from the Fed. Without that financing the firm would have collapsed the next morning.

So the way it was explained to me was, during the transfer of those -- that loan and the collateral associated with that loan, there were many pieces of collateral that Barclays

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could not value, so they did not accept them in transfer from the Fed. And mechanically, it was explained to me the way that worked was, in a tri-party repo, the Fed transferred all of the positions to JPMorgan and then JPMorgan began transferring those positions upon the receipt of money from Barclays transferred money, and then they would transfer the positions that secured that repo.

And at some point during that process, Barclays became very uncertain as to some percentage of that collateral, I don't recall the exact amount, but it was a large number, maybe as much as, you know, 20 percent of the collateral, and when Barclays didn't accept those positions, they, by definition, just got left at JPMorgan.

They -- so JPMorgan was left with collateral that they were not comfortable with but Barclays would not accept, so -- and JPMorgan, I guess they attempted to negotiate but couldn't get that negotiation done.

**Q. Who was the "they" who attempted to negotiate?**

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A. That JPMorgan and Barclays attempted to negotiate, but they couldn't complete a negotiation for a transfer of that collateral.

**Q. And when you say Keegan's explanation, I take it you're talking about the conversation you had with Keegan before the meeting?**

A. Yes.

**Q. Okay.**

A. The 5:30 in the morning.

**Q. And did Keegan give you any level of detail about why Barclays was uncertain about some percentage of that collateral?**

A. It was collateral that they didn't -- was either they didn't have the expertise to value or was not transparent, meaning that there were financing vehicles that Lehman set up that went into the repo that you couldn't look through to what was in those financing vehicles.

**Q. And did Mr. Keegan give you any information about what that collateral was, what type of securities?**

A. He didn't know.

**Q. Well --**

A. In some cases he didn't know. In

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other cases it was, yes, it was illiquid and either high-yield or defaulted or consumer mortgage securities that were the ones he could identify that were very hard to value.

**Q. I'm hearing this in two categories, and I want to be sure you and I are on the same page. There's a component of this collateral that's hard to value and there's a component that is not transparent, which may also make it hard to value --**

A. Yes.

**Q. -- but some of it's transparent and hard to value?**

A. Yes.

**Q. Okay. Did he identify any particular categories of hard-to-value securities? I get it, high-yield or mortgage-backed, but did he --**

A. Distressed.

**Q. Did he use the term "racers" at all?**

A. That was the non-transparent category.

**Q. Okay. Tell me what Mr. Keegan said to you about racers.**

A. "What are they?"

**Q. Anything else?**

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A. "And what's in them?" I said, "I don't know." I then went and -- Paolo Tonucci, I directed him to Paolo, who would be able to tell him what was in those various financing vehicles.

Q. Do you know what Paolo Tonucci then spoke to Mr. Keegan about?

A. I don't know.

Q. Did Mr. Keegan say anything else about racers other than he didn't know what they were?

A. He asked how would I find out.

Q. Did Mr. Keegan say anything to you that, in sum or substance, compared the assets that Barclays had agreed to buy in the first transaction, to use your term, and the assets that were in the repo that were the subject of this transfer problem?

A. He summarized it as it was a very different and riskier category of assets.

Q. Was anyone else present when Mr. Keegan and you had this early morning conversation?

A. No.

Q. Did you understand from Mr. Keegan, in

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sum or substance, whether he had spoken to others at Lehman about this problem by the time he had spoke to you?

A. I understood I was the first person he had explained it to, at Lehman that he had explained it to.

Q. When you spoke to him and about this topic, did you let him know that there was a Friday meeting planned with -- that you had been asked to come to an early morning meeting by Mr. McDade?

A. Yes.

Q. And did you tell him you'd get back to him after that meeting to see if there was a solution to this problem?

A. Yes.

Q. So, in the course of that meeting, now we've got the JPM issue, it's been identified, you've had the first transaction outlined to you broadly, the JPM problem --

A. Right.

Q. -- has been also described. What happens next?

A. I'm sorry, so where -- what time of

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day are we now?

Q. I'm sorry. I've got you back at the Friday meeting with -- we're back at the Friday meeting with Bart, yourself, Klein --

A. Okay.

Q. -- Ricci and Keegan.

A. Yeah.

Q. Okay.

A. So at that meeting I walk through -- I summarized the issues, as I understand them, for this dispute with Barclays. I inform Barclays that those executives -- that JPMorgan had shut down Lehman's DTC account, and I made the supposition that that would make it impossible to complete the transaction as contemplated.

Q. And what, if anything, did Mr. McDade have to say about those topics?

A. He said he agreed with me.

Q. Did you speak first in outlining the issues?

A. Yes.

Q. And how did Klein, Ricci and Keegan or any combination of those three men react to that news?

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A. There was some question as to, well, what do we do now? I suggested that the only reasonable course of action would be to proceed with the transaction substituting the repo assets, the assets that Barclays had lent against, for all the other securities that had been contemplated in the transaction and leave the rest of the transaction as was.

Q. So if I understand this -- I want to make sure I understand this correctly. Your suggestion was to take the assets that were the subject of the first transaction roughly outlined in that schedule?

A. Yeah.

Q. And instead of transferring that body of assets, transfer the body of assets that are in the repo, correct?

A. Yes.

Q. Maybe I'm not understanding. Is the problem here, doesn't it involve the assets that are in the repo? Hasn't Mr. Keegan told you that Barclays is uncertain about some components of the repo collateral?

A. So, again, the issue was that it was

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my view that JPMorgan would not transfer one dollar of one asset unless they got whatever they wanted in a negotiation from Barclays or anybody else, and even then they wouldn't -- it didn't appear that they would do anything but be hostile, having shut down our DTC account, which is a, I mean, that's a colossal nightmare. You know, you've got tens of billions of dollars of securities supposed to settle a regular way that you've been transacting with your clients, and every single one of them fails -- both sides, buys and sells.

**Q. How is JPM in a position to shut down Lehman's?**

A. They're our clearing bank.  
So it was, again, my supposition, which was confirmed by, you know, the senior finance staff and Bart and then finally the Barclays guys, that, you know, JPMorgan should be viewed as not going to cooperate. And Barclays was attempting to reach JPMorgan and never got a return call, was my understanding. I was told that by probably Gerard LaRocca or Keegan, one of them, and hence, you know, the

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only assets that could participate in any way in this transfer were ones that Barclays had held in custody at their clearing bank, Bank of New York, and potentially any assets at Lehman that were unencumbered and were held away from JPMorgan.

**Q. So, again, forgive me if I'm thick here, but is the problem with JPMorgan -- withdrawn.**

**When you talk about the assets that Barclays had at Bank of New York, those were assets within the repo?**

A. Yes.

**Q. Within the Barclays repo, yes?**

A. Yes.

**Q. Do you know the amount, the value of the assets that were at Bank of New York within the Barclays repo?**

A. I didn't know that. I didn't know the amount or the value of those assets.

**Q. Okay. And again, so we're clear, you didn't know at the time or you don't remember now, or both?**

A. I didn't know at the time.

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**Q. Okay. And the problem with JPM refusing to transfer assets over, is that away from the repo?**

A. Yes.

**Q. Okay. So your suggestion is to focus on the repo as the body of assets that can be transferred to Barclays?**

A. Right.

**Q. Plus unencumbered, other unencumbered assets?**

A. That were not held or cleared through JPMorgan.

**Q. That are away from JPMorgan?**

A. Correct.

**Q. Now, did you have an idea then of what the value of that total package could be?**

A. No.

**Q. So you've made --**

A. Because I wasn't clear on what actually got transferred and what didn't get transferred. I knew broadly the size of the Fed repo. I didn't know what the disputed amount was or the assets.

**Q. I just need to follow up a bit on the**

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disputed amount.

A. Yeah.

**Q. I'm trying to be as clear as I can --**

A. Yeah.

**Q. -- as to what's the JPM problem and how much of that is --**

A. Right.

**Q. -- whether that's -- we've established the JPM problem is away from the repo, right?**

A. The JPM problem vis-a-vis Lehman Brothers was away from the repo, that is correct.

**Q. But vis-a-vis Barclays, it was not away from the repo?**

A. My understanding was there was a dispute about Barclays not accepting all the collateral out of the Fed, only some of it, and that collateral they didn't accept got left behind or, by definition, stays at the clearing bank, which was JPMorgan. JPMorgan clears for the Fed.

**Q. And I think you had an -- a rough idea of what percentage of that. It was some percentage. It could have been as much as 20**

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percent that Barclays would not accept, yes?

A. Yes.

**Q. Did you have a sense of a dollar amount of what was net of the amount that Barclays would not accept?**

A. It was somewhere in the 40s.

**Q. And when you're talking about the amount of the repo, are you talking about the amount that was financed or the total collateral as pledged? Withdrawn.**

**You told me you're not an expert in repos --**

A. Yeah.

**Q. -- and neither am I, but I understand there's a haircut.**

A. Yeah, I think I was talking about the amount financed, but I'm not -- I'm sketchy on that.

**Q. So you make this proposal. McDade says he thinks you're right. What's the reaction from Klein, Ricci and Keegan?**

A. Ricci says -- there was some discussion, I don't recall the specifics of it, but Ricci then I recall specifically says, I

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believe he's right. We have to change course.

**Q. I know it's a long time ago, but just given that phrase, is that -- are you quoting him? Are you summarizing him?**

A. I'm summarizing him. I was under a tremendous amount of pressure and stress, so my memory is a little fuzzy from that.

**Q. Sure.**

A. At one point in this meeting, Mike Klein looked at me and said, "Do you need a doctor?"

**Q. Really?**

A. Yeah.

**Q. Well, you're kind of a last-minute volunteer in this thing, you know?**

A. Yeah. Story of my life.

**Q. What did Klein say?**

A. He said, okay, let's get to it.

**Q. And did Keegan say anything?**

A. He said, well, we haven't analyzed this collateral so we don't know what it's worth. How are we going to figure out what it's worth? And we said we had started a process with these large positions.

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The problem turned out to be not only was the data delivered in a not usable fashion to the heads of the desk, but it was a different set of securities. So we had to -- it was determined that the finance staff of Lehman Brothers needed to work with the finance staff at Barclays and get a list of everything that was in their repo line, and then take that off the systems and try to put it together in a way that could be delivered to the various trading desks to try to put some value on it.

**Q. When you referred before to, you know, we had started that process, was that a -- were you referring --**

A. From the night of the --

**Q. Yes.**

A. -- Daniel Flores' e-mail.

**Q. That's the one that refers to trying to come up with fire-sale-type prices?**

A. Yes.

**Q. What in your mind was the connection between the, what I'll call the fire sale analysis and the problem you were dealing with on Friday? I'm not sure I'm clear on that.**

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A. Only that we had -- that I could tell the Barclays guys that we were already trying to value some collateral and relative to the marks. The -- Lehman suffered, you know, two issues that week around valuations. One was the markets were unbelievably volatile and incredibly illiquid, and that we were a less than desirable counterparty for our -- so that we had been, when we had been liquidating collateral, we had been losing a lot of money, and in addition to that, a smaller problem was, you know, since the firm had filed for bankruptcy, not every person was showing up to work.

**Q. Now, the fire sale liquidation analysis, the top 100 positions there, did you -- are you saying that some of those might have been in the repo?**

A. Yeah, but we didn't know which ones.

**Q. You didn't know?**

A. We had no idea.

**Q. That's not, so we're clear, the 100 positions we're talking about there is not with direct reference to what was in the repo?**



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A. No, not at all. We didn't know we had this problem Thursday night.

**Q. What's the tone of the Friday meeting? I know it's tense and Klein says do you need a doctor, but are people angry? Are they calm? Are they -- what's the temperature in this meeting?**

A. Anxious. It's very, very anxious. How are we going to be able to try to get anything over the goal line by 4 o'clock this afternoon, and if we don't, you we don't believe we can survive the weekend.

**Q. And why 4 o'clock that afternoon? Was that the bankruptcy hearing?**

A. Yeah, that was the bankruptcy hearing, the scheduled bankruptcy hearing.

**Q. Is there any discussion in this meeting about what, if anything, needs to be said to the bankruptcy court about this event, these events?**

A. That it would have to be explained. This transaction was very different than what had been previewed two days before, and it would have to be explained why it came up.

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**Q. Who said it would have to be explained?**

A. Barry -- in that meeting -- I apologize, some of these meetings are blurs.

**Q. Sure.**

A. But at some point during the day, Barry Ridings, I was in a meeting with him, I believe it was maybe at the tail-end of this meeting, he came in and, you know, he listened to this explanation again and then he said, okay, we're going to have to be able to explain this.

**Q. And did the Barclays folks in the meeting -- and by that, I'm including Klein here, Klein, Ricci, Keegan -- did they have anything to say about whether and when this would have to be explained to the court?**

A. No, they were taking Barry's lead.

**Q. Now --**

A. We all knew that there was a court hearing scheduled at 4 o'clock.

**Q. Why do you describe this as a very different agreement?**

A. The list of assets is different.

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**Q. Was there any discussion about the consideration Barclays was to give in the agreement also changing?**

A. Besides the amount, no.

**Q. Well --**

A. Meaning besides the fact that it wasn't 72 million, you know, the attempt was to get it so that the assets and liabilities would balance.

**Q. And the 72 million, you're looking at Exhibit 19, yeah?**

A. Yes.

**Q. That financial schedule.**

**Was there any discussion of the compensation and cure components of the assumed liabilities changing?**

A. Not at that meeting.

**Q. Did you at some point hear a discussion about the compensation and cure components changing?**

A. At some point late in the day, there was a -- not on the compensation, there was no discussion of compensation. Ian -- not Ian, Paolo was attempting to figure out a better

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estimate. I think they had always continually worked on it, but they were trying to figure a better estimate.

Ian -- I remember Paolo coming into a meeting I was in, I don't remember who it was with, but he came in and said I'm working through the cure payments to try to see if there's some wiggle room there, so to speak, in terms of what is that estimate. I never got a -- I was -- that was not part of the transaction I was concerning myself with. I was supposed to try to shepherd along as best as possible in this incredible short timeframe some valuation work that we could get to on the assets.

**Q. Wiggle room up or wiggle room down, or both?**

A. I don't -- he didn't mention it one way or another. Some variance I guess is a better way to put it. I don't remember whether it was higher or lower.

**Q. In the Friday meeting with McDade and you and Klein and Ricci and Keegan, was there any discussion about Lehman defaulting on the**

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**repo?**

A. No.

**Q. Were you ever involved in any discussion concerning the topic of Lehman defaulting on the repo?**

A. Not a discussion. I received an e-mail that referenced it, but --

**Q. From whom did you receive the e-mail?**

A. I don't have it in front of me.

You've got it, Gerry Reilly. That was a couple days earlier when I wasn't involved, so I didn't pay attention to it.

**Q. Do you recall that as an e-mail where Reilly proposed defaulting on the repo was the best way to deliver the bulk discount to Barclays?**

A. I would have to look at it again.

**Q. We'll get to that a little later.**

A. Fine.

**Q. Is there any discussion in the Friday meeting of that, of using the repo as a means of delivering a haircut to Barclays?**

A. No.

**Q. Was there any discussion in the Friday**

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**meeting of terminating the repo?**

A. I recall a discussion, I don't remember who was in the meeting, but with Barclays that if we couldn't get to closure that day --

**Q. That Friday?**

A. That Friday.

**Q. Okay.**

A. -- it was likely they would terminate the repo.

**Q. Do you know if at any point Barclays did terminate the repo?**

A. I don't know the answer to that.

**Q. When the Barclays folks said if they couldn't get to closure on Friday, they would have to terminate the repo, was there any reaction from the Lehman folks to that statement?**

A. We understood they had to do what was within their rights and what they felt was appropriate.

**Q. Who said that?**

A. McDade.

**Q. I'm going to show you, Mr. Kirk,**

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**what's previously been marked as Exhibit 21. Take a moment to look through the document. (Document review.)**

A. Okay.

**Q. Is that the document, the e-mail you referred to a moment ago?**

A. Yes.

**Q. At the very bottom of the document, paragraph 3, and this is within the e-mail from Reilly to Lowitt, Gelband, Tonucci and Kelly, is the following, "Not clear on the amount of block discount or how we make it happen. Defaulting on repo could be the best, as discount could be taken from haircut." Do you see that?**

A. Uh-huh.

**Q. You may have said something a moment ago about this, but let me ask you, did you have an understanding when you saw this e-mail of what it was Mr. Reilly was talking about, using the repo?**

A. No, this was before I was involved, and I was CC'd on this e-mail because of my work in the auction rate book and the prime brokerage financing at the time.

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**Q. Okay. So the first paragraph of Mr. Reilly's e-mail refers to the auction rate book?**

A. Yeah.

**Q. And the question appears to be whether it's staying or going in the transaction, yes?**

A. Right.

**Q. And was it your understanding that it was that first question that was the reason it was forwarded to you, because you're in the ARS world?**

A. I had been in the ARS world in my previous job, and I assumed it was forwarded to me so they could figure out who should answer these questions, who would be most expert to answer them.

**Q. All right. So when you got the whole e-mail, including the other two questions --**

A. Yep.

**Q. -- am I fairly understanding your testimony that you didn't really focus on 3 because it wasn't in your area of responsibility, you didn't understand it to be addressed to you?**

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A. As a matter of fact, my answer indicates what I did was I redirected them to people I thought could be helpful.

**Q. Okay.**

A. That's what I thought my responsibility would be.

**Q. Okay.**

A. Try to put point them in a direction.

**Q. Beg your pardon.**

And with respect to the third question, you say, "The third question is definitely for Cogs," C-O-G-S. Is that a reference to Mr. Coghlan?

A. John Coghlan, yes.

**Q. John Coghlan, okay. And why was it a question for John Coghlan?**

A. Because he was head of repo financing at the firm.

**Q. Do you know if Mr. Coghlan ever did address the third question?**

A. No idea.

**Q. Now, when you were in the Friday meeting and the topic of the repo was being discussed -- withdrawn.**

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business anymore.

**Q. Was there a reference to the -- any discussion in the Friday meeting of a discount?**

A. No, not that I recall.

**Q. Okay. So I'll summarize it just to frame my next question so you're not married to how I do this. But as I understand it, the meetings happened, you identified the JPM problem, the recommendation is made to transfer what's in the repo, and there's some issues about how to value what's in there; is that a fair summary?**

A. Yes.

**Q. Okay. And the general sense of the meeting from both sides of the table is, okay, let's go to it and try and figure this out, we have until about 4 o'clock to see if we can solve this, yes?**

A. Yes.

**Q. And Barclays says if we can't reach a resolution of that by about 4 o'clock, we may have to terminate the repo, correct?**

A. Correct.

**Q. And McDade has said if that comes to**

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**This is sent, this e-mail comes to you on Thursday?**

A. Yes.

**Q. At roughly 6:40 in the morning. Note that that's Greenwich mean time shown there.**

A. Yeah.

**Q. The next morning you're in a meeting where the repo is being discussed. Did that trigger any recollection in your mind about, you know, an e-mail discussion the prior day about using the repo as a means of making the block discount happen?**

A. No, I, you know, I get 500 e-mails a day, and during this period of time we were getting probably twice that. So ...

**Q. And when you saw a reference --**

A. I was answering all of them, so, you know, or as many of them as I could.

**Q. And also to the mysterious number that we finally identified.**

A. Yes, and then there's the mysterious number.

**Q. Now, the --**

A. I don't think the company's in

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**be, you know, you have to do what you have to do?**

A. Those are your rights.

**Q. And you don't know if the repo was in fact ever terminated by Barclays?**

A. I don't know that.

**Q. Okay. So now what happens? Does the meeting end or is there further discussion?**

A. I recall the meeting ending at that time.

**Q. And what did you do next?**

A. I went back to my office. I called the various senior executives I was going to meet with and told them that we should be getting a new schedule at some point of assets that we would have to -- they should ignore that schedule of assets and we would be getting a new schedule of assets at some point to try to put some values on.

**Q. When you say "ignore that schedule of assets," again, for clarity of record, are you talking about Exhibit 19, the original financial schedule?**

A. I'm sorry, no, I'm talking about the



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list of hundred assets that was delivered to the desk early that morning.

**Q. Got it. As part of the fire sale liquidation?**

A. Correct.

**Q. And you told them they would be getting a new list of assets. Who is it you're having these communications with?**

A. I certainly called Mike Gelband and I would have called some subset, although I don't recall who I spoke to specifically or who Mike spoke to, but I would have called either Kaushik, Charlie, Eric and Gerry.

**Q. Eric is Eric Felder?**

A. Yes.

**Q. And Gerry is Gerald Donini?**

A. Yes.

**Q. And who is Charlie? Is that Charlie Spero?**

A. Spero, uh-huh.

**Q. And did do you this on a conference call? Call them separately? In a meeting?**

A. Probably called them separately.

**Q. And what happened after that?**

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A. We waited for a deliverable schedule from finance.

**Q. Did you get one?**

A. Got one at sometime within the hour.

**Q. And from whom within finance did you receive that?**

A. I don't remember who it was.

**Q. Who within finance was in charge of that piece?**

A. It would have been some combination -- well, no, most likely it would have been Paolo, working with accounting.

**Q. And Paolo or somebody at his direction delivers a schedule. To whom is it delivered?**

A. I don't recall, but I'm sure it was instructed to be delivered directly to the people on this list that I mentioned before and myself and Mike.

**Q. And what happened with the list?**

A. We asked the senior managers to try to value the list given the market conditions that day, and generally the response was the markets are too volatile, there's too many line items, it's not possible to get this done in any

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pinpoint fashion in this timeframe, but we'll try.

**Q. And at some point was there -- did they solve that problem? Did they produce valuations?**

A. The only valuations we got was that -- I don't know what they communicated to Barry Ridings or the people working on that specific testimony.

**Q. Uh-huh.**

A. But I got the word back generally that many of these positions were so illiquid that, you know, that if we were to try to sell them, given our circumstances, you know, the bids might be down 20 percent.

**Q. Was there any discussion about looking at the valuations that Bank of New York had given to what was in the repo?**

A. We didn't have access to Bank of New York's valuations, I don't believe.

**Q. Did you talk to anyone who was familiar with how repurchase -- more familiar than you with how repurchase agreements worked to see if the collateral agent applied**

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valuations to what was held as collateral?

A. I don't recall having that specific conversation.

**Q. Do you know if anyone did have that discussion, that conversation with Barclays?**

A. They might have.

**Q. Without regard to the particular detail or even the number --**

A. Yeah.

**Q. -- you had a sense of whether by, you know, at some point on that Friday a value was put on the collateral within the repo?**

A. We at Lehman determined that the out -- the volatility of those outcomes we couldn't put a number that was specific on it. It was, given how illiquid many of the assets were, some of the assets you could value, but the markets were tremendously volatile all week.

We had had, you know, been getting closed out of -- just the prior day we got closed out of a repo, a futures position on the CME that had excess margin of, you know, \$1.6 billion.

As far as we could tell, the markets

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hadn't moved that much. Many of them were in Treasury and government bond futures, but the CME called us to inform us they had closed us out of the position and we had lost all the money in excess margin. So it was becoming very hard to value even what were deemed to be liquid securities.

**Q. Just so we're clear here, the closing out of the position by the Chicago Merc doesn't bear on the collateral that's within the repo; that's a separate event, correct?**

**A.** That is a separate event, but it was -- it was demonstrative of the volatility and the issues we were wrestling with.

**Q. And the question that I would like to put is, did Lehman come to some number, did it come to a value, a valuation of the collateral that was within the Barclays Repurchase Agreement?**

**A.** We couldn't come up with a specific value. We didn't have time. We knew we didn't -- we tried, but we couldn't, and we knew the risk was that Barclays would close out of the repo and take all that collateral, so they

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owned it, that we would end up with no excess from that collateral, and that from the very high-level work that the senior risk managers did, which we were relying upon, that we could be well out of the money, it was likely that we could be well -- we would be well out of the money in that below the haircut, which I believe, understood to be somewhere between 5 and 10 percent.

**Q. When you referred to a moment ago to one of the risks was that we would not end up with -- we would end up with no excess, what did you mean by that?**

**A.** Meaning that if Barclays closed us out of the repo, our experience had been, not just in that period of time but other cases, but certainly in that week, that their liquidation of that collateral would eat through more than the haircut they had and that they would not get back a hundred cents on the dollar. So we, Lehman, would not receive any proceeds back from the liquidation of that collateral.

**Q. What was your understanding of what would happen if there was excess collateral?**

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**Who would keep that?**

**A.** If there was excess collateral, Lehman would keep that value.

**Q. Was that discussed at the Friday meeting, that if there was excess collateral, it would say with Lehman?**

**A.** There was not a discussion of closing out the repo and the mechanics of it.

**Q. So did there come a point on Friday where Lehman communicated to Barclays either -- where it communicated a value of the repo or it said it couldn't? What happens next vis-a-vis talking to Barclays.**

**A.** In terms of talking to Barclays, the next meeting was at some point, call it 3 o'clock in the afternoon, and they were indicating that the -- their view of the value of the repo securities was far below the stated value and below their loan value and that Lehman should attempt to find other unencumbered assets, should continue to attempt to find other unencumbered assets or the transaction may not take place.

**Q. Now, is this response from Barclays**

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**after the Friday meeting has ended? I want to get a sense of the timeline within Friday of when Barclays does this.**

**A.** This is like 3 o'clock in the afternoon.

**Q. Does Barclays tell you, does Barclays tell Lehman how much difference has to be made up?**

**A.** No.

**Q. Is your answer that you don't remember or that you remember that they didn't?**

**A.** I remember they didn't.

**Q. So what happens now?**

**A.** We said we'll continue to look. And Ian and I had a conversation with McDade offline, just he and I. I said, I don't have any basis or enough information to argue with them about their point of view, about the value of collateral, and that the high-level work we've been doing leads me to believe that they have a reason to be nervous about this.

**Q. And what was --**

**(Mr. Kelley confers with the witness.)**

**A.** Barclays.

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1 I'm sorry. Who is "they," he asked  
2 me. Barclays has a reason to be nervous.

3 **Q. And did McDade give any instructions**  
4 **or suggestions about what to do next?**

5 A. He said, well, make sure Ian is  
6 working on any possible unencumbered assets.

7 **Q. So did McDade give a target of any**  
8 **kind of how much in unencumbered assets needed**  
9 **to be found?**

10 A. At that point, all we could do was  
11 figure out what was there, and specifically I  
12 don't recall, but I do -- I do recall that the  
13 shortfall was described as, you know, billions  
14 of dollars.

15 **Q. And by "the shortfall," you're**  
16 **referring to what?**

17 A. The value that Barclays thought those  
18 repo assets were worth versus their stated  
19 value.

20 **Q. That's the shortfall between what**  
21 **Barclays thought they were actually worth and**  
22 **the amount of the repo?**

23 A. Yeah.

24 **Q. So your recollection is that the**  
25

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1 **shortfall was in the billions of dollars?**

2 A. Yes.

3 **Q. But do you have a recollection of**  
4 **whether it was between 2 billion and a gazillion**  
5 **billion? Is there some range you were thinking**  
6 **of at the time?**

7 A. Somewhere between 2 and 5.

8 **Q. And I'm trying to get a sense here,**  
9 **that's why I keep pushing at the number --**

10 A. Yeah.

11 **Q. -- I'm trying to get a sense here of**  
12 **what the project is. Is it go find every**  
13 **unencumbered asset we have on the one end of the**  
14 **possibilities, or we have to make up this**  
15 **specific shortfall, go find that amount at the**  
16 **other?**

17 A. I didn't have the conversation. Bart  
18 had the conversation with Ian, so I didn't have  
19 that conversation specifically with him.

20 **Q. So you don't know one way or the other**  
21 **whether Mr. McDade gave a target of some kind to**  
22 **Mr. Lowitt?**

23 A. No, I don't know that.

24 **Q. Your understanding from your view of**  
25

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1 **things was there was a shortfall?**

2 A. Yes.

3 **Q. It wasn't Barclays was saying it**  
4 **wouldn't be made up out of the repo bucket?**

5 A. Yeah.

6 **Q. Therefore, other assets, unencumbered**  
7 **assets, capable of delivery had to be found?**

8 A. Right.

9 **Q. It was in the billions, but for**  
10 **your -- for the purposes of what you were doing,**  
11 **you didn't really need to know the number, you**  
12 **just needed to know the problem had --**

13 A. Right, I was not the one who was going  
14 to solve those specific issues, so that was  
15 someone else's job.

16 **Q. Was anyone other than Lowitt involved**  
17 **in the particulars of solving the problem?**

18 A. I don't know the answer to that.

19 **Q. Did you ever learn whether Lowitt**  
20 **enlisted others in the task of finding**  
21 **unencumbered assets?**

22 A. No, I didn't, I didn't find out.

23 **Q. Did there come a time when you learned**  
24 **whether additional value, additional**  
25

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1 **unencumbered assets were located that could be**  
2 **transferred to Barclays?**

3 A. Sometime late in the afternoon between  
4 3 and 4, Ian came into a meeting where I was  
5 about to start a phone call with Bart, the Weil  
6 Gotshal lawyers on the phone, and I was sitting  
7 in the room with Mark Shapiro and I think it was  
8 Jim Seery and the Barclays, again, Diamond,  
9 Ricci, Klein and Keegan, and Ian came in and he  
10 said there's a -- there's a schedule of assets  
11 that we have that are unencumbered. I believe  
12 the number was \$1.9 billion of marked value.

13 In addition, he said there might be  
14 value in our 15c3 margin, which at the time I  
15 remember that specifically because I was like,  
16 "Gee, what's that? I've never heard of that."  
17 So he said there might be value there, I don't  
18 know yet, and there might be others.

19 So we said to Ian, well, get us a  
20 schedule of what's in the 1.9 billion in the --  
21 I think he referred to it as being in the box  
22 unencumbered of these unencumbered assets, i.e.,  
23 they were being financed by Lehman's unsecured  
24 debt, I believe at the time, or equity, and he  
25

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came back with that list, showed it to myself and to Keegan and some others.

Keegan looked at it and said, you know, this is the -- these assets are even harder to value than what we already have. I don't even know what these are. I specifically remember there being residential mortgage residual interests and things like IOs and some very illiquid aged positions in high-yield and distressed debt. I don't specifically recall what else it was, but I do recall the list was a -- there was a reason why there was nobody financing those assets and it was because they were the most illiquid and hardest to value securities that Lehman Brothers owned on its balance sheet.

**Q. So when Keegan said these are even harder to value than --**

A. Yeah.

**Q. -- than the other stuff, was he comparing this new schedule with the hard-to-value stuff in the repo?**

A. Yes.

**Q. And apart from saying it was hard to**

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**value, did Keegan have anything to say about that?**

A. He said I don't know how I'm going to put a value on this of any positive number.

**Q. Describe for me as best you can the conversation about that topic and who said what.**

A. Ian came in. He delivered this -- he said -- we started the conversation with Ian delivering the list of assets, and he handed it to Keegan -- he handed out probably five copies. Most people were just staring at it saying nothing.

Mike looked at it and said, you know, I -- what's this asset? What's that asset? I think Ian may have answered specifically if he knew what the nature of those assets were, because in like residential mortgages you have names for deals that unless you knew that that was a residential mortgage deal, you wouldn't know what it was, you know, Sasco or things of that nature.

And Ian had some familiarity with the -- with what the assets were because he had been responsible for financing those sorts of

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assets or, in this case, having the equity finance the assets. And so there was some back and forth around that, and Keegan made the conclusion that he was not going to warrant any positive value on these assets from his seat, and he made that -- he sort of said that to Rich Ricci and Bob Diamond: "I can't value these. I would be very nervous about putting a positive value on them."

**Q. So, just to kind of cut to the end of the sequence here, does Barclays agree to take these additional buckets of value, you know, the 15c3 and the assets, the unencumbered assets in the box?**

A. Yes.

**Q. And when they make that agreement, are you present? Was that at this meeting?**

A. Yes.

**Q. And tell me what was said in that regard.**

A. That, all right, we don't know what they're worth. They might be worth something, so we want them. And Bart was on the phone, he agreed -- he agreed to that, and I think that

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was the sum and the substance as to what was said about those assets.

**Q. Was any number put on now the total value of the deal, combining the assets that were in the repo plus the 15c3 and the unencumbered assets in the box?**

A. I don't recall a specific number being put on the -- on the deal.

**Q. Whether you recall today what the number was, I'm going to press on this a little bit, do you recall if a number was put out there?**

A. I'm sorry, I don't recall what -- whether -- I don't recall whether there was a number specifically put out there.

**Q. Okay. And did you have a sense after this conversation, Mr. Lowitt reports on the 15c3 assets and the unencumbered assets and Keegan says, I can't value those and then the agreement's made, well, we'll take them because there may be some value, whether after that point there were additional searches for value? Do you know one way or the other?**

A. I don't recall one way or another. I



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<p>1           HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 don't recall what the whole -- I recall 15c3. I</p> <p>3 recall this 1.9 billion because I was sitting</p> <p>4 there with the list and I said, "Gee, what is</p> <p>5 15c3?" So I recall those two. I don't recall</p> <p>6 if there were other categories discussed during</p> <p>7 that meeting.</p> <p>8       <b>Q. You said a moment ago that Lowitt,</b></p> <p>9 <b>when he reported on the 15c3 piece, he put that</b></p> <p>10 <b>at about 1.9 billion?</b></p> <p>11       A. That was the marked value.</p> <p>12       <b>Q. Of marked value. And that there was</b></p> <p>13 <b>some value, but -- of what was in the box, but</b></p> <p>14 <b>he didn't know what it was?</b></p> <p>15       A. It was some value in 15c3, but he</p> <p>16 didn't know how much there would be.</p> <p>17       <b>Q. So when that meeting ended, did you</b></p> <p>18 <b>have, whether you remember the number or not</b></p> <p>19 <b>today, did you have a sense of what the total</b></p> <p>20 <b>additional value was between the 15c3 and the</b></p> <p>21 <b>contents of the box?</b></p> <p>22       A. No.</p> <p>23       <b>Q. Was there any plan made to calculate</b></p> <p>24 <b>that number?</b></p> <p>25       A. I think Ian was putting together a</p>	<p>1           HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 schedule that he would communicate to Bart</p> <p>3 with -- there was a, first of all, in that</p> <p>4 discussion there was a wrap-up of this is what</p> <p>5 the deal looks like. It's got the 45 billion,</p> <p>6 it's got the, on the asset side, it's got this</p> <p>7 1.9, it's got 15c3, it may have had, you know,</p> <p>8 other components to it.</p> <p>9       Bart agreed, Ian and Bart agreed that</p> <p>10 these were the components on the assets side.</p> <p>11 It had the assumed liabilities. They agreed</p> <p>12 that those were the assumed liabilities that</p> <p>13 were going to agree, I don't remember the exact</p> <p>14 numbers, and they said, okay, do we have an</p> <p>15 agreement? Barclays said yes. Ian was going to</p> <p>16 go codify that, I believe, and talk to Bart.</p> <p>17       Bart was in a car with Weil lawyers on</p> <p>18 his way to bankruptcy court. That's why he</p> <p>19 wasn't in the room.</p> <p>20       <b>Q. When you say Ian was going to go away</b></p> <p>21 <b>and codify that, you mean put the schedules</b></p> <p>22 <b>together?</b></p> <p>23       A. I think so, yes, that's what I mean.</p> <p>24       <b>Q. Did Mr. Klein say anything about this</b></p> <p>25 <b>process adding additional value for Barclays?</b></p>
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<p>1           HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2       A. No, not adding additional value. He</p> <p>3 didn't comment on that.</p> <p>4       <b>Q. Did Klein make any recommendation in</b></p> <p>5 <b>your hearing as to whether Barclays should or</b></p> <p>6 <b>should not accept this deal?</b></p> <p>7       A. Klein recommended that they accept the</p> <p>8 deal if -- when they got the additional, all the</p> <p>9 additional collateral.</p> <p>10       <b>Q. I don't mean this to be sarcastic. I</b></p> <p>11 <b>just can't come up with another way of phrasing</b></p> <p>12 <b>it.</b></p> <p>13       We're looking around for all this</p> <p>14 additional value and your memory is not clear on</p> <p>15 whether there was a target or not?</p> <p>16       A. Yeah.</p> <p>17       <b>Q. Framed that way, what was the project</b></p> <p>18 <b>here? Was it to go find everything else and</b></p> <p>19 <b>turn it over, or was it to find some, some</b></p> <p>20 <b>identifiable bucket of value until Barclays</b></p> <p>21 <b>said, yeah, that's enough? Do you see the</b></p> <p>22 <b>distinction I'm making?</b></p> <p>23       A. Yes, it's -- the project was the</p> <p>24 second, not the first.</p> <p>25       <b>Q. Okay. So the idea was there would be</b></p>	<p>1           HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 some value left in Lehman; it was just a</p> <p>3 question of finding enough additional value to</p> <p>4 make Barclays still close?</p> <p>5       A. Yeah. And that project was Ian's</p> <p>6 project, not mine. I wasn't -- I was an</p> <p>7 observer to this part of the process.</p> <p>8       <b>Q. What was Ian's manner in this meeting?</b></p> <p>9 <b>I mean, it's a tough week for everybody, but</b></p> <p>10 <b>what's his demeanor?</b></p> <p>11       A. He hadn't slept in a week, so he was a</p> <p>12 little harried.</p> <p>13       <b>Q. Did Ian identify other potential</b></p> <p>14 <b>sources of additional value that he had looked</b></p> <p>15 <b>at apart from the box and 15c3?</b></p> <p>16       A. He --</p> <p>17       MR. HUME: Objection. Asked and</p> <p>18 answered.</p> <p>19       <b>Q. You can answer.</b></p> <p>20       A. No, he, as I said, he may have, but I</p> <p>21 didn't -- I don't remember.</p> <p>22       <b>Q. You don't remember, then, any</b></p> <p>23 <b>particular other sources that he might have</b></p> <p>24 <b>discussed?</b></p> <p>25       A. No, I don't.</p>

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(Discussion off the record.)

BY MR. GAFFEY:

**Q. While we're pulling a couple of documents out, Mr. Kirk, let me see if I can get the rest of, you know, the blocks of your day.**

**This meeting ends. Lowitt is given the task of codifying -- your word -- you know, getting a list together?**

A. Yes.

**Q. What do you do next?**

A. I just go back to my office. Sit there silently, stunned.

**Q. Maybe try to get some sleep?**

A. Yeah.

**Q. Do you have any role or involvement in this asset collection process we've been talking about after this point?**

A. No.

**Q. Did you go to the hearing?**

A. No.

**Q. Did anyone render reports to you from the hearing --**

A. Yes.

**Q. -- as to what was going on?**

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**Okay. Who did that?**

A. I got a couple e-mails from Jim Seery and I had a conversation with Jean-Francois Astier.

**Q. And what were the, in sum and substance, what were you hearing in the reports from -- we don't have to go through this chapter and verse, but what were the nature of the reports you were getting back from the --**

A. There was, first of all, they were -- JF and Jim were trying to understand what the new deal was, so I had a conversation with JF trying to explain to him what I knew, and because they were, I believe, going to participate in a meeting with the creditors explaining this, what the deal was.

And then I got -- so there was some back and forth to just try to reach me on that front, and then there was -- they sent me a couple updates of, you know, Bart's proffers being read and there's cross-examination, and then ultimately the deal was done with some quotes from Judge Peck later that night.

**Q. Did anyone --**

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A. And then somebody called me when it was done.

**Q. Somebody called to say the judge has approved the deal?**

A. Yeah.

**Q. Did you get reports from anyone that told you whether or not anyone had told the judge that this was a new transaction, different transaction?**

A. I didn't get presented -- one early conversation I had with JF, I didn't talk to anybody directly by phone, and I just got a few cursory e-mails.

**Q. And --**

A. But at one point there was, you know, my understanding was there was -- and early, there was discussions before they went, you know, to court to wrap it up with various constituents. And certainly there were constituents there, Bart, Michael Klein and others, that had the details.

**Q. Now, did you stay in your office until you heard about the --**

A. No. No. I went home and I went to

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bed sometime late that evening.

**Q. Sometime after you heard that the deal had been approved?**

A. No. No. I went to bed before that. Somebody woke me up out of bed.

**Q. Did you continue to do any work or did you perform any tasks in connection with the transaction --**

A. No.

**Q. -- over the weekend?**

A. Saturday I had no involvement. On Sunday, Bart asked me to come in and try to participate in the closing of the transaction at Weil Gotshal.

**Q. Did you do that?**

A. Yes.

**Q. Just so I can plan a little bit for what I want to ask you after lunch break, give me an outline of what you did on the Sunday.**

A. So we went over to Weil. We, Bart and I, were put in a room. You know, we were there as a resource as people were trying to put schedules together, et cetera.

An issue came up early in the morning

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around the settlement of trades on Monday and how they were going to be handled, Lehman trades, customer trades with Lehman. We tried to help work that issue out, and then we effectively became observers of this dispute between JPMorgan and Barclays, as there were many meetings held into the evening that JPMorgan came to Weil about 6 o'clock Sunday night and at the urging of the Federal Reserve and they walked through, described in very large group meetings the issues they had.

We sort of hung around and eventually were told that Barclays and JPMorgan had resolved their dispute and that the deal could go to closure.

**Q. When you say "we," are you talking about yourself and Mr. McDade?**

A. And there were others at Lehman as well.

**Q. Who else?**

A. Jim Seery was there. I called him late in the afternoon. Ian Lowitt was there. Paolo was there. A guy name Alastair Blackwell was there. Steve Berkenfeld was there. That's

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everybody I recall.

**Q. Did you learn how the dispute between JPM and Barclays had been resolved, what the terms of that resolution were?**

A. They didn't tell us.

**Q. So did anybody ask, anybody say how did this issue get resolved?**

A. Yeah, and they said it's between us and -- Barclays representatives told us -- well, I don't remember if it was the lawyer or who specifically, but a representative from Barclays said that's between Barclays and JPMorgan.

**Q. So the closing did not take place on the Sunday, correct?**

A. It eventually I think closed Monday morning, but it was one continuous -- I left at 2 A.M., and then they worked towards closing at some point in the morning prior to the markets opening.

**Q. Did you go back for the closing?**

A. No.

**Q. Do you know if any additional documentation was done to reflect the new agreement that had been reached on Friday?**

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A. Oh, I'm sure there was lots of documentation, but I'm not a lawyer so I wasn't reviewing it.

**Q. Do you know, apart from whether you read it or reviewed it, my question is do you know if a new -- a new contract or an amendment or anything else was written up that would reflect the fact that the deal had changed on Friday?**

A. I assume so. I don't -- I never saw actual evidence of it, but ...

**Q. I've asked you a couple of times when you said you've assumed. What's the basis of the assumption? The fact that it --**

A. That you couldn't proceed with a commercial transaction without it.

**Q. Do you have any factual basis to think that it was? Did you talk to anybody about it? Did you see any documents?**

A. I didn't see any documents. Certainly we were advised by Weil that the documents were in good order.

(Exhibit 316, an e-mail chain with attached balance sheet, marked for

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identification, as of this date.)

**Q. I have put before you, Mr. Kirk, a three-page document. I'll ask you to take a look through it sufficiently to tell me whether you've seen it before.**

A. Yes, I've seen it.

**Q. Did you see it at or around the time that it's -- of September 19 at 6:16 A.M.? That's the date at the top.**

A. Yes.

**Q. And was this sent to you -- was it your understanding this was sent to you to prepare for that Friday meeting we've been talking about?**

A. It was one, one of the documents that I assumed we would review.

**Q. Okay. And do you recall --**

MR. HUME: Are you marking it as an exhibit?

MR. GAFFEY: Yes, I did, Hamish. It's 316.

MR. HUME: I'm sorry.

**Q. Do you recall reviewing it at the Friday meeting?**



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A. No, I actually don't recall reviewing this.

Q. Let me just direct your attention, sir, to the third page -- well, to the second page. You'll see that that's a balance sheet that's attached to the e-mail and then referred to in the second e-mail.

A. Yes.

Q. Do you know who prepared this balance sheet?

A. I don't know specifically who prepared it, but it would have been prepared by accounting.

Q. Okay. And --

A. Well, the e-mail seems to indicate Martin -- somebody who worked for Martin Kelly had prepared it.

Q. And within the balance sheet, sir, the fifth column that's entitled Transaction Adjustments, do you see that?

A. Yes.

Q. Do you know what that column represents, what the entries in that column are meant to represent?

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A. Only from reading it.

Q. I don't want you just to guess from the face of the document.

A. No.

Q. Do you recall any discussion of transaction adjustments?

A. No.

Q. And in particular, if you could take a look at the last page of the document, I would ask you to take a look at the Transaction Adjustments column where it says 2 billion and 1.645 billion, are you with me?

A. Uh-huh.

Q. And you'll see that those relate to, if you read across to the left, items Bonus Payable and Cure Payments?

A. Uh-huh.

Q. And if you read across with me on the Cure Payments line, you'll see, as of 8/31/08, the number 701 is there, you with me?

A. Uh-huh.

Q. And then as of 9/17/08, 605?

A. Uh-huh.

Q. And then there's a transaction

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adjustment of 1,645,000,000?

A. Uh-huh.

Q. Resulting in a balance sheet transfer total of 2.25 billion, do you see that?

A. Uh-huh. Uh-huh.

Q. 2.25 is the amount that you recall Mr. Tonucci telling you was the assumed liability for cure that was Barclays' consideration in the deal?

A. Yes.

Q. Do you have any knowledge or have you been involved in any discussion where a transaction adjustment of 1.645 billion was made against Lehman's books? Do you know if that number was written up?

A. If it was written up, meaning?

Q. Do you know if the amount for cure payments shown on Lehman's books was written up by 1.645 billion?

A. Oh, I have no idea.

Q. Did you ever have a discussion with Mr. Tonucci or Mr. Kelly or Mr. Lowitt about that topic?

A. No.

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Q. And I'll ask you the same question, sir, with respect to the line for bonus payable. Do you see a transaction adjustment of 2 billion, and the 2 billion is contained in the Balance Sheet Transferred column?

A. Yes.

Q. Any conversations with Lowitt, Kelly or Tonucci about that topic?

A. No, no conversations.

Q. Any conversations with anyone else about that topic?

A. No.

Q. Was that topic addressed at the Friday meeting we've been talking about, to your recollection?

A. Only to the extent that there was a liability that was 2 billion and 2 and a quarter billion that's reflected in this balance sheet that had been agreed to prior.

Q. Do you know if those liabilities of 2 billion and 2 and a quarter billion were based on Lehman's accruals on its books, or were they agreed numbers?

A. I don't know.

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1           **HIGHLY CONFIDENTIAL - A. KIRK**  
2   **7:18 P.M. on that Friday, did you have a**  
3   **discussion with anyone else about Barclays**  
4   **taking the collateral that was in the repo at**  
5   **any point?**  
6       A. No.  
7       **Q. Did you talk to anybody about that**  
8   **over the weekend?**  
9       A. No.  
10      **Q. Was there any conversation about that**  
11   **when you and Mr. McDade were at Weil in**  
12   **connection with preparing for the closing?**  
13      A. Not that I recall.  
14      **Q. Do you know if the issue of Barclays**  
15   **taking the collateral in the repo was addressed**  
16   **at the closing in any way?**  
17      A. I assume not, because if the  
18   transaction was that they were -- well, I don't  
19   remember is the better answer. I don't remember  
20   that being discussed.  
21      **Q. And as you sit here today, you have no**  
22   **recollection of you yourself engaging in a**  
23   **conversation with anyone about Barclays taking**  
24   **the collateral that was in the repo?**  
25      A. Except for a vague recollection that

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1           **HIGHLY CONFIDENTIAL - A. KIRK**  
2   read back?  
3       THE WITNESS: Yeah, why don't you read  
4   the question back, please. I'm not quite  
5   sure exactly...  
6       (Record read.)  
7       MR. HUME: Same objection.  
8       A. No, that discussion never took place.  
9   There was too much uncertainty about the values.  
10      **Q. Was there, in connection with this**  
11   **value of additional profit we talked about on**  
12   **Friday, was there any discussion about what it**  
13   **would take to get Barclays up to the value of**  
14   **the financing in the repo?**  
15      A. Not that I was present at. I don't  
16   know if there were any away from me.  
17      **Q. This sort of goes to a few other**  
18   **questions I have asked you about, whether there**  
19   **was a goal or a cap on how much had to be**  
20   **collected on Friday.**  
21       Without regard to what the number may  
22   or may not have been, was the goal to find  
23   enough assets to replace the loss in value  
24   within the repo?  
25      MR. HUME: Objection. Vague and

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1           **HIGHLY CONFIDENTIAL - A. KIRK**  
2   Jim would have called me about it.  
3       **Q. And just so I'm clear on that, because**  
4   **you're gesturing at the document saying "Jim**  
5   **would have," do you have a recollection --**  
6       A. Yeah.  
7       **Q. -- or are you just inferring that from**  
8   **the document?**  
9       A. It's vague. I don't recall the  
10   specific conversation.  
11      **Q. Okay.**  
12      A. But if it had been an issue, I'm sure  
13   I would remember it.  
14      **Q. Okay.**  
15      A. Since it wasn't.  
16      **Q. And from the discussions on Friday, it**  
17   **was your understanding that if Barclays got --**  
18   **if this value collection effort gave Barclays**  
19   **enough value to support the financing in the**  
20   **repo, that Lehman would get the excess back,**  
21   **right?**  
22       MR. HUME: Objection.  
23       Mischaracterizes the testimony.  
24      A. I don't --  
25       MR. KELLEY: Do you want the question

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1           **HIGHLY CONFIDENTIAL - A. KIRK**  
2   ambiguous and lack of foundation.  
3       A. In the end, I was the witness to an  
4   agreement that was agreed to between Bart and  
5   Ian and the Barclays team, but I wasn't part of  
6   any discussions as to the basis for that  
7   agreement.  
8       **Q. And the agreement that you were a**  
9   **witness to is the one you described to me before**  
10   **where they said, do we have a deal?**  
11      A. Yes.  
12      **Q. And the agreement was we have a deal.**  
13      **(Exhibit 321, a document bearing Bates**  
14   **Nos. AK-LB-BANKR00002 through 27, marked for**  
15   **identification, as of this date.)**  
16      **Q. Mr. Kirk, I have put before you a**  
17   **document bearing Bates number AK-LB-BANKR000002**  
18   **through 27. Do you recognize the document?**  
19      A. Yes.  
20      **Q. What is it?**  
21      A. It's a notebook.  
22      **Q. Is it your notebook?**  
23      A. Yes, my notebook.  
24      **Q. Is it in your handwriting?**  
25      A. Yes.

**HIGHLY CONFIDENTIAL - A. KIRK**

A. Yes.

**Q. Anything to add? Any knowledge as to why you're listing those eight names there?**

A. I don't recall specifically. Some of these people I'm responsible for, some of them I'm not, so I don't recall exactly what this list was -- why it's there. This would have been during the week, early in the week of the 15th.

**Q. And if you would turn to starting at page 24, it's the following four pages are -- following three pages are a typewritten balance sheet of some kind.**

**Are we in the same place?**

A. Yes.

**Q. And it's entitled Funding 2008 Q3 Balance Sheet?**

A. This was a schedule which was faxed to Bart Saturday morning at the Fed that he and I used to prepare for a meeting with John Mack, Vickram Pandit, John Thayne and their associates to discuss the possible iterations of Lehman Brothers going forward. This was those -- that was the first -- well, that's the first pages of

**HIGHLY CONFIDENTIAL - A. KIRK**

**Q. Do you know, these numbers on the right-hand side, 1B and 1.7B, what do they represent?**

A. I don't recall what they represent.

(Exhibit 323, a document bearing Bates Nos. AK-LB-BANKR000030, marked for identification, as of this date.)

**Q. You have before you, Mr. Kirk, what we have marked as Exhibit 323, bearing Bates number AK-LB-BANKR000030. Are these notes in your handwriting?**

A. Yes.

**Q. Can you, as you look at them, do you remember the circumstances under which you took the notes?**

A. I think these were notes on Sunday during the closing.

**Q. And why is it you think they're notes on Sunday during the closing?**

A. Because I see a reference to Alastair, which would be Alastair Blackwell, who I didn't deal with prior to Sunday, and Tom Hamilton, who was head of mortgage trading at Barclays, who was trying to deal with this issue of the

**HIGHLY CONFIDENTIAL - A. KIRK**

funding.

This second page is a -- is an analysis that B of A did marking down our assets earlier in the week, which we also discussed at that meeting. B of A's valuation of Lehman Brothers' assets.

**Q. You can put that aside. I'm done with that document.**

A. Okay.

(Exhibit 322, a document bearing Bates Nos. AK-LB-BANKR000028, marked for identification, as of this date.)

**Q. Before you, Mr. Kirk, is Exhibit 322, a one-page set of notes bearing Bates number AK-LB-BANKR000028. Is that your handwriting?**

A. Yes.

**Q. Do you have any recollection of making these notes?**

A. Yeah, this was somebody trying to explain to me in broad terms what 15c3-3 was.

**Q. Okay. I take it you're looking at the reference to customer accounts segregated in margin in the box in the upper left-hand corner.**

A. I'm looking at the whole page, yes.

**HIGHLY CONFIDENTIAL - A. KIRK**

settlements.

The dispute that arose on Sunday was who was going to guarantee the settlements of the trades that were supposed to settlement on Lehman Brothers' account starting Monday morning.

**Q. And that dispute, broadly speaking, involved DTC needing some comfort as to who was going to guarantee those settlements?**

A. Yes.

**Q. Now, on the notes themselves there is, amidst the names and above the name Tom Hamilton and Harry Harnson -- I'm just giving you that for placement on the document.**

A. Uh-huh.

**Q. -- is what appears to be an Assets and Liabilities column; is that right?**

A. Yes.

**Q. Okay. Can you explain to me what that represents?**

A. To the extent that I understand it, it represents some assets of 45 and a half billion, goodwill would be the next line of 250 million, and then it had a loan from BarCap that says 45

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**HIGHLY CONFIDENTIAL - A. KIRK**

MR. HUME: Objection.

MR. KELLEY: Objection. Speculation.

Misstates prior answers.

MR. HUME: Vague and ambiguous as to valuation.

A. I didn't have that understanding.

**Q. Did you have --**

A. Nowhere did anybody say they should be equal.

**Q. Okay. Did you have an understanding that Barclays was going to get more than it had funded?**

A. In terms of assets?

**Q. Yes.**

A. Yeah, they were going to get assets that were unencumbered.

**Q. And when you added the unencumbered to the amount in the repo, was it your understanding that Barclays was going to take more out than it had funded into the repo?**

A. Well, they were also assuming other liabilities away from the repo.

**Q. I understand that.**

**Did you understand they were going to**

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**HIGHLY CONFIDENTIAL - A. KIRK**

**take out more than they had funded into the repo?**

MR. KELLEY: Objection. That's based on speculation. Calls for speculation, I should say.

THE WITNESS: So I --

**Q. You can answer that question.**

MR. KELLEY: It just asks him to identify the source of his knowledge.

MR. GAFFEY: No, I'm going to ask him to answer the question I asked.

Will you read it back?

(Record read.)

A. I don't understand the nature of, when you say "take out more," what does that mean?

**Q. Barclays funds the repo to the tune of \$45.5 billion, you understand that, right?**

A. Right.

**Q. In the asset transfer agreement that's at issue for the bankruptcy court, Barclays is going to take a certain amount of assets out of Lehman, correct?**

A. Yes.

**Q. Was it your understanding that that**

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**HIGHLY CONFIDENTIAL - A. KIRK**

**latter bucket of assets was to equal or to exceed the amount that Barclays had paid into the repo for funding?**

MR. HUME: Again, objection. Vague and ambiguous as to the valuations posed in your question.

A. My understanding was the totality of the assets should attempt to get somewhere close to covering all the liabilities.

**Q. The liabilities, you mean the liabilities in the repo plus the assumed liabilities?**

A. Yes.

**Q. Is that what you mean?**

MR. HUME: Objection to the phrase "assumed liabilities."

A. Yes.

**Q. And the assumed liabilities you're referring to are the assumed liabilities for payable and comp in the amount of 4.25 billion, correct?**

A. Correct, and then ultimately the assumed liabilities in guaranteeing the trading obligations which they were agreed to do come

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Sunday.

**Q. Okay. And do you know what the resolution was of the issue of guaranteeing -- the dollar resolution was of the guarantee of the trading liabilities?**

A. I don't recall specifically, but they agreed to I think fund into DTC some amount of cash to make good on the liabilities. I don't remember what the number was.

**Q. Do you recall that the number was about \$250 million?**

A. Sounds reasonable.

**Q. Okay. So Barclays is to take out of the deal an amount roughly in balance to the amount in the repo, the assumed liability for comp, the assumed liability for payables, and the guarantee to the DTC; is that your understanding?**

MR. HUME: Object to the form of the question.

A. And the goodwill.

**Q. And the goodwill. And the goodwill is about 250 million, correct?**

A. Right, so that -- well, they were

HIGHLY CONFIDENTIAL - A. KIRK

buying the business of Lehman Brothers and they were buying a whole bunch of assets which had, in my opinion, quite uncertain value so that they could lose many billions of dollars or make many billions of dollars on those assets given the volatility of the markets, and in addition to that, they would obviously get the ongoing operations of Lehman Brothers.

Q. Was it your understanding that --

A. So that it was --

Q. Sorry.

A. What I would say is that, in my opinion, there was, at least from my seat, no way to know what the actual value of those assets would end up being for Barclays, you know, over -- because I had no idea what strategies they were going to pursue about those assets, whether they were going to hedge them, you know, all the variety of things that they might end up choosing to do to execute a large, huge block of -- the size of a transfer of this size of assets is, you know, enormous and at the time maybe even unprecedented.

Q. Was it your understanding that the

HIGHLY CONFIDENTIAL - A. KIRK

transaction was supposed to give Barclays a gain on day one?

A. No.

Q. I hear what you're saying about longer term they may operate the business and make money out of it. The question about day one, I want to be sure we're --

A. Yeah.

Q. -- hearing each other here. Was it your understanding that there was any immediate gain embedded for Barclays in the deal that was made on Friday?

MR. HUME: Objection. Lacks foundation.

A. No, there was no understanding on my part that there was a gain.

(Recess; Time Noted: 2:10 P.M.)

(Time Noted: 3:15 P.M.)

(Exhibit 324, a document bearing Bates

Nos. AK-LB-BANKR0000987 through 119, marked for identification, as of this date.)

BY MR. GAFFEY:

Q. Mr. Kirk, you have before you what we have marked as Exhibit 324, a document bearing

HIGHLY CONFIDENTIAL - A. KIRK

Bates number AK-LB-BANKR000097 through 119. Do you recognize the document?

A. Yes.

Q. What is the document?

A. This is a document that describes the deal that was cut early in the week between Lehman and Barclays.

Q. Is that your handwriting on the document?

A. No.

Q. Do you know whose handwriting it is on the document?

A. No.

Q. I would note that the document was produced to us by you. Do you know how you came into possession of this document with somebody else's handwriting on it? Any memory?

A. No, I don't know what this is.

Q. Do you have any knowledge of what the annotations mean on the asset side where somebody has written "ACT" and "HC"?

A. No.

Q. Would you understand the phrase "HC" to mean haircut?

HIGHLY CONFIDENTIAL - A. KIRK

A. That could be.

Q. Would you understand the phrase "ACT" to mean actual?

A. That's not usually a vernacular, but maybe.

Q. I asked you --

A. It could be "account."

Q. Could be. I don't know what your --

A. Yeah. Yeah.

Q. I asked you earlier this morning if you had any knowledge of a discount or a haircut being given to Barclays on the book value of the assets being traded for in the early part of the week. Does this refresh your recollection as to whether there was an agreement on the deal as it originally was made on Monday and Tuesday to give Barclays a discount from book value?

A. No.

Q. Could you put before you Exhibit 19? It's within the pile.

A. What does it look like?

Q. It's the other copy of that financial statement, the one-pager.

A. Yeah.



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1 HIGHLY CONFIDENTIAL - A. KIRK  
2 be assuming all kinds of risks from failed  
3 trades on Friday and in addition to the trades  
4 going forward on Monday, and that they wanted  
5 some -- they needed a margin safety to be able  
6 to do that. So they were concerned that they  
7 were exposed.

8 Q. And did you hear anything about the  
9 extent of that exposure?

10 A. No.

11 Q. Do you know if the deposit or the  
12 guarantee was meant to cover the entire  
13 potential exposure?

14 A. I don't know the answer to that.  
15 Those discussions happened directly, that is, my  
16 understanding those discussions happened  
17 directly between DTC and Barclays.

18 Q. Do you know if there was a written  
19 agreement?

20 A. I don't know that.

21 Q. You never saw a written agreement  
22 resolving this dispute with the DTC?

23 A. No. No.

24 Q. Did you hear anything about what would  
25 happen to the guarantee if it turned out not to

1 HIGHLY CONFIDENTIAL - A. KIRK  
2 be used?

3 A. No.

4 Q. Changing the subject. You mentioned  
5 back on September 14 that Mr. McDade told you  
6 that the first transaction that was being  
7 discussed with Barclays wasn't going to go  
8 forward. Do you remember that?

9 A. Yes.

10 Q. And I think you said he told you that  
11 the FSA had turned down the application to close  
12 that transaction?

13 A. Yes.

14 Q. Did he tell you why?

15 A. Yes, that Barclays needed a waiver to  
16 guarantee the trading obligations -- I'm sorry,  
17 Barclays -- for Lehman to -- for them to close  
18 the transaction, they would have to get a  
19 shareholder vote, which would take some period  
20 of time, I forget if it was 30 or 45 days, but  
21 some reasonable period of time, and that it was  
22 the view of all the participants, including  
23 Treasury and the Fed and everybody, that Lehman  
24 would not make it for 30 days without somebody  
25 else guaranteeing the trading obligations for

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1 HIGHLY CONFIDENTIAL - A. KIRK  
2 that period of time.

3 The only person who would do that was  
4 Barclays. Barclays apparently needed a waiver  
5 of shareholder approval to make that guarantee,  
6 which the FSA deemed they would not give.

7 Q. Okay. Let me now switch topics again  
8 and take you back to the Friday meeting that you  
9 testified that I think you said started around 3  
10 o'clock on Friday afternoon?

11 A. Uh-huh.

12 Q. This is the meeting that you had with,  
13 among others, Mr. Klein, Mr. Diamond and  
14 Mr. Keegan from Barclays?

15 A. Uh-huh.

16 Q. You have to give me an out-loud  
17 answer --

18 A. Yes.

19 Q. -- for the court reporter. Thanks.

20 Was Mr. McDade physically present in  
21 that meeting or is he on the phone?

22 A. He's on the phone.

23 Q. And were there any discussions about  
24 that during that meeting about having to go back  
25 and explain the deal to the Barclays board?

1 HIGHLY CONFIDENTIAL - A. KIRK

2 A. No, not in that meeting.

3 Q. Did you hear that at another meeting?

4 A. No, I didn't hear it in any meeting.

5 Q. When you say no, you don't think it  
6 happened or you don't remember?

7 A. No, I didn't hear it. Didn't  
8 happen -- that was not discussed in front of me.

9 This was what day again? This was the  
10 19th?

11 Q. On Friday, the 19th.

12 A. Friday, yes, no.

13 Q. You had a meeting --

14 A. Yeah.

15 Q. -- late in the afternoon where -- this  
16 is late in the afternoon where I think you said  
17 this is when Barclays came back and said they  
18 thought the value of the securities didn't match  
19 the value of the loan and so they were looking  
20 for additional unencumbered assets?

21 A. Uh-huh.

22 Q. Is that right?

23 A. Yes.

24 Q. And Mr. Gaffey asked you a couple of  
25 times about whether they gave a target or a



**HIGHLY CONFIDENTIAL - A. KIRK**

**number for how much more they would need?**

A. Yes.

**Q. Right?**

As best you can recall, they didn't give you such a number, correct; is that right?

A. That's correct.

**Q. And nobody -- Mr. Klein didn't say anything about having to have a certain number to go back to the Barclays board?**

A. No.

**Q. I'm going to mark as my only exhibit as 326 an e-mail from you to Mr. McDade.**

(Exhibit 326, an e-mail chain, marked for identification, as of this date.)

A. Right.

**Q. Do you recall sending this e-mail to Mr. McDade?**

A. I do recall that.

**Q. So the bottom e-mail on the page is from you to Mr. McDade. It's sent on that Friday at 3:39.**

A. Uh-huh.

**Q. Do you see that?**

A. Yes.

**HIGHLY CONFIDENTIAL - A. KIRK**

**Q. You write to Mr. McDade, "Rich Ricci just told me he won't blow up this trade by being a pig."**

**Do you recall the context for that?**

A. Well, the Barclays team had left. Bart was on the road and he was having discussions with Ian about whatever additional assets there were. You know, I implored to these guys that they shouldn't blow this deal up, 10,000 jobs were at stake, you know, there was a tremendous amount of pressure on all of us, and Rich said to me something to this effect: I won't blow the deal up by being too piggish.

I wanted to make sure Bart knew that because they were wrapping up with he and Ian whatever issues there were, so that's why I sent the e-mail.

**Q. Was there a concern on the Lehman said that the Barclays people were being too piggish?**

A. I was concerned that we were going to go into bankruptcy court, which there's always uncertainty, and try to describe a deal that didn't look like the deal that they had heard

**HIGHLY CONFIDENTIAL - A. KIRK**

about two days before.

So my primary concern at that point was that there be as much flexibility, so to speak, at least give the -- enough operating room that we wouldn't go into court, have the transaction denied, and have to put the padlocks on the building Saturday morning.

So -- and I've been around many, many bankruptcy cases over two decades. Wildly uncertain things happen in these courts in circumstances.

**Q. Sorry. Is that what you meant by "blow up the trade"?**

A. Yes.

**Q. That the bankruptcy court wouldn't approve the deal?**

A. That's correct.

**Q. And you were, just so I understand your testimony, you were concerned that that might happen if Barclays was too piggish?**

A. Yeah, I think there were a myriad of risks that could have done, you know, I mean, the -- the stress of that not happening that evening and you only had one shot at it, you

**HIGHLY CONFIDENTIAL - A. KIRK**

know, it was -- certainly everybody was very concerned that this was sort of a do-or-die situation, literally.

**Q. Was the comment about being a pig related to the effort to find unencumbered assets?**

A. Yes.

**Q. And you didn't -- so you don't have, since that's in Mr. Lowitt's bailiwick, you don't have a specific number or value that would --**

A. No, this comment had been made to me. I just wanted to pass it along.

**Q. And then Mr. McDade asks you back, "Are the shorts all gone?" What was that a reference to? Did you have an understanding as to what he meant?**

A. I don't recall specifically why he asked that, but that was a problem we were dealing with all week at Lehman, that we were naturally getting longer every day because our hedges were either derivatives that had been wiped out by the terms of their contracts or short positions that were being bought in on the

1 HIGHLY CONFIDENTIAL - A. KIRK  
2 other side.

3 So, you know, asset prices were  
4 imploding and we were naturally getting longer  
5 every day. So his question was how long is the  
6 firm, so to speak, at this moment in time. I  
7 believe -- I don't -- so that's what I -- I  
8 guess I tracked that down.

9 Q. And that's what your answer to  
10 Mr. McDade says?

11 A. Yeah. Yeah.

12 MR. ROTHMAN: That's all the questions  
13 I have. Thank you.

14 THE WITNESS: You're welcome.

15 EXAMINATION BY

16 MR. TECCE:

17 Q. Mr. Kirk, my name is James Tecce. I'm  
18 an attorney at Quinn Emanuel. We are special  
19 counsel to the Creditors Committee. I just  
20 wanted to ask you a couple of follow-up  
21 questions.

22 Going back to Friday, September 19th,  
23 I believe it is, I think that you had said that  
24 it was your belief on that day that JPMorgan  
25 Chase would be "hostile," I believe was the word

1 HIGHLY CONFIDENTIAL - A. KIRK  
2 that you used, with respect to the transaction.  
3 What was the basis for that belief?

4 A. The fact that they had shut our DTC  
5 account down was one issue. The other issue was  
6 that Barclays had described to me they were  
7 having a dispute with JPMorgan about the  
8 transfer of collateral. In addition to that,  
9 JPMorgan had been, my -- my understanding, it  
10 had been described to me by Ian that JPMorgan  
11 over time prior to the bankruptcy had been  
12 squeezing a lot of additional collateral out of  
13 Lehman Brothers along the way.

14 Q. Do you have an understanding as to  
15 when JPMorgan froze the DTC account?

16 A. You know, it was either Thursday or  
17 Friday. I don't remember. I think it was --  
18 I'm pretty sure it was Friday, but it may have  
19 been Thursday.

20 Q. And when were you told about the  
21 dispute between Chase and Barclays that you  
22 described?

23 A. Friday morning.

24 Q. Going forward --

25 A. And that's when I learned about the

1 HIGHLY CONFIDENTIAL - A. KIRK  
2 DTC account. So I don't remember whether they  
3 had closed -- I learned about it all on Friday.  
4 I just don't remember if it was for that day or  
5 it was for the previous day.

6 Q. Do you know what the basis -- do you  
7 have an understanding of the basis of  
8 Mr. Lowitt's statements that Chase had been  
9 taking collateral?

10 A. Well, he was dealing with them  
11 directly, so they were -- my understanding was  
12 that they were threatening to not clear our  
13 transactions without additional collateral prior  
14 to the bankruptcy.

15 Q. Did he provide any examples of that to  
16 you?

17 A. The one example that he provided was  
18 that they requested Thursday night, the 11th --  
19 is that right? Yeah, the 11th, that Lehman  
20 deliver another \$5 billion to them prior to the  
21 opening on Friday.

22 Q. Going forward to the 21st, I believe  
23 Sunday, the day of the closing, September 21,  
24 you had just spoken briefly about the dispute  
25 regarding the guarantee of trades with the DTC.

1 HIGHLY CONFIDENTIAL - A. KIRK  
2 Were you aware of any other disputes  
3 besides that issue between Chase and Barclays at  
4 that time?

5 A. They were still arguing about the  
6 transfer of collateral, your clients were there  
7 for some of those arguments, in a, what I would  
8 refer to as a giant conference room with 50  
9 people in it and a lot of yelling.

10 Q. Right. And do you remember the  
11 substance of those disputes regarding the  
12 collateral?

13 A. JPMorgan felt as if Barclays should  
14 pay them and take additional collateral to  
15 complete the repo transfer from the Fed, and in  
16 addition to that, they actually asked for  
17 Barclays to buy additional collateral even  
18 beyond that that they had gotten from Lehman  
19 Brothers earlier.

20 Q. And do you have an understanding as to  
21 what the resolution of that dispute was?

22 A. No, they wouldn't tell us.

23 Q. Do you have an understanding of anyone  
24 at Lehman who does know the resolution of that  
25 dispute?

**HIGHLY CONFIDENTIAL - A. KIRK**  
been part of the Fed repo or would they have been part of the, quote/unquote, unencumbered?

A. The issues that I'm discussing with him here are settlements. So these are going forward -- they're not actually positions. They're going-forward settlements between Lehman and other counterparties that Lehman's standing in the middle buying and selling all kind of securities. So that the positions were reflected.

This would have reflected what risk there would be in settlements not settling in a normal way. So that -- but to answer your question, I don't -- I don't remember what the percentage of treasuries were in this. I wasn't dealing with him on any -- on that issue.

MR. TECCE: Those are the only questions I have. Thank you for your time.

MR. HUME: I have just a few questions.

EXAMINATION BY

BY MR. HUME:

**Q. Mr. Kirk, my name is Hamish Hume. We met before. I represent Barclays.**

**HIGHLY CONFIDENTIAL - A. KIRK**

**Mr. Kirk, during the week of September 15 to September 22, 2008 that you've been questioned about, did you believe there was any other viable purchaser of Lehman Brothers other than Barclays?**

A. No.

**Q. Did you believe there was any other alternative for Lehman Brothers other than the Barclays acquisition?**

A. Liquidation.

**Q. Did you believe the Barclays acquisition was the best outcome for the Lehman estate for all stakeholders?**

A. Yes.

**Q. During the questioning earlier in the deposition, you were asked -- you testified about discussions with Mike Keegan about valuation of assets, do you recall that, generally?**

A. Yes.

**Q. And I think at one point you were explaining that Mr. Keegan complained about certain asset values and that you at some point huddled with Ian Lowitt and Bart McDade to**

**HIGHLY CONFIDENTIAL - A. KIRK**

**discuss whether there was any good basis for disagreeing with Mr. Keegan's concerns. Do you recall describing that?**

A. Yes.

**Q. I believe you testified that the three of you concluded there wasn't really a strong basis for disagreeing with Mr. Keegan. Do you recall that?**

A. Yes.

**Q. During those discussions, were you attempting to negotiate the best deal you could for Lehman Brothers?**

A. Yes.

**Q. Do you believe you participated in arm's length negotiations or that you witnessed arm's length negotiations?**

A. I'll be clear about that. I wasn't actually negotiating and I wasn't -- I had no authority to negotiate. I believe we were participating in arm's length negotiations, Lehman was, with Barclays.

**Q. You testified earlier in the deposition that you did not have an understanding regarding whether there would be a**

**HIGHLY CONFIDENTIAL - A. KIRK**

**gain at Barclays on day one; do you recall that line of questioning?**

A. Yes.

**Q. Did you have any knowledge about how Barclays would account for this transaction on its balance sheet?**

A. No.

**Q. Did you give any thought or analysis to how Barclays would account for the transaction on its balance sheet during the negotiations?**

A. No.

**Q. Did you have any knowledge of whether Barclays would be required to record an intangible asset in excess of a billion dollars on its balance sheet?**

A. No.

**Q. Did I understand your testimony earlier that you believed many of the assets being transferred to Barclays were of uncertain value?**

A. Yes.

**Q. And were many of those assets going to take some time to value?**

**HIGHLY CONFIDENTIAL - A. KIRK**

A. Yes.

Q. Did you understand the liabilities for cure payments and compensation to be estimated liabilities?

A. Yes.

Q. Did you understand that Barclays was stepping into the shoes of Lehman with respect to its exchange-traded derivative accounts?

A. I was not aware of any agreements around the derivatives.

Q. You weren't involved one way or the other with derivatives?

A. I wasn't involved one way or the other.

Q. Did you generally understand that both the assets and the liabilities Barclays was taking over were uncertain and difficult to value as of the time of the transaction?

A. Yes.

Q. Therefore, as of the time of the transaction, was it in your mind possible that after Barclays had taken the time to value the assets and the liabilities in accordance with its own methodology and accounted for the

**HIGHLY CONFIDENTIAL - A. KIRK**

transaction under its own accounting methodologies, that it would be possible that it record either a gain or a loss on the transaction --

MR. GAFFEY: Objection.

Q. -- as of day one?

MR. GAFFEY: Object to the form.

Q. Do you understand the question?

MR. GAFFEY: You can ignore me.

THE WITNESS: Okay.

MR. GAFFEY: He can't, but you can.

THE WITNESS: Okay. I never know with these objections if I'm supposed to ignore them or not.

I think it was completely a matter of -- I had no idea what their accounting issues were on any of those fronts, so I was not aware of that, and whether they would end up recording a gain or loss over time would depend upon market conditions, hedging strategies, you know, disposition strategies, et cetera, that I had no insight into how they were going to execute them.

Q. I understand that. I think you said

**HIGHLY CONFIDENTIAL - A. KIRK**

that earlier. I'm saying, wholly apart from what would happen over time, after Barclays took the time to actually value the assets and liabilities as they were valued on day one, given the uncertainties in both the assets and values that Barclays took on and the limitations on what you knew about derivatives and other assets, was it in your mind at least possible that Barclays would record either a gain or a loss on day one, as of day one of the transaction?

MR. GAFFEY: Objection to form.

MR. ROTHMAN: Objection to form.

A. Yes, it was possible.

Q. Mr. Kirk, you testified a little bit about the transfer of collateral when Barclays replaced the Federal Reserve's lending position on the repo transaction, do you recall that, generally?

A. Yes.

Q. Were you aware of that when Barclays advanced its \$45 billion in cash to replace the Federal Reserve, Barclays did not receive the same collateral that had been pledged by Lehman

**HIGHLY CONFIDENTIAL - A. KIRK**

to the Federal Reserve in its repo?

A. I was not aware of that.

Q. Were you aware of the operational difficulties that arose when the Fed collateral was released into the Lehman clearing account so that some of that collateral disappeared or was tucked into other transactions and, therefore, could not be transferred to Barclays?

A. I was not aware of any specifics of those issues. I was aware there was a -- some dispute.

Q. I'd like to refer you very quickly to Exhibit 321.

A. Okay.

Q. The third-to-last page with the Bates number, number in the bottom corner, number 25.

A. Okay.

Q. Which I believe you testified reflected write-downs that were being discussed or considered by Bank of America in the potential Bank of America transaction; is that correct?

A. That is correct.

Q. Was this done during that weekend



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**HIGHLY CONFIDENTIAL - A. KIRK**

**before the bankruptcy when you were at the Fed?**

A. This was done I believe the Friday,  
December -- September 12th.

Q. And I don't know if you testified or  
not, but whose handwriting is this on this page?

A. I don't know whose handwriting this  
is. It's not mine.

Q. Was the general idea that Bank of  
America wanted haircuts or discounts from the  
marked to market book values that Lehman had for  
these assets?

A. Yes.

Q. And was that information shared with  
the Federal Reserve during discussions?

A. Yes.

Q. And did the Federal Reserve express  
any surprise or disagreement with that concept?

A. I wasn't there when they shared it,  
this information.

Q. How do you know it was shared with the  
Federal Reserve?

A. Because we got this delivered to us at  
the Federal Reserve. We shared it with -- I  
think Bart gave a copy to Shafron and we shared

**HIGHLY CONFIDENTIAL - A. KIRK**

it with John Mack, Vickram Pandit and John  
Thayne and their teams.

Q. You testified earlier about the  
unencumbered collateral in the clearance boxes  
that Ian Lowitt identified as assets to be  
transferred, do you recall that?

A. Yes.

Q. And you testified that there was an  
agreement that those assets would be transferred  
made on the Friday, September 19?

A. Yes.

Q. Is that right?

A. Correct.

Q. You also testified that you were aware  
of an issue over the weekend relating to the  
DTC's desire for some support for settlement  
obligations on the Monday, correct?

A. Correct.

Q. And your general understanding was  
Barclays agreed to deposit \$250 million to  
address those settlement obligations?

A. Yes.

Q. Did anyone at any time ever tell you  
or lead you to believe -- let me withdraw that

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**HIGHLY CONFIDENTIAL - A. KIRK**

**and say it differently.**

Did you at any time form an  
understanding at any time that weekend or that  
Monday, the 22nd, did you ever form an  
understanding that the unencumbered collateral  
in the clearance boxes that Ian Lowitt had  
identified to be transferred in the transaction  
were not going to be transferred in the  
transaction because of the way in which Barclays  
was dealing with the DTC settlement issue?

MR. ROTHMAN: Objection to the form.

MR. GAFFEY: Join.

MR. TECCE: Join.

A. No.

Q. That was never your understanding?

A. No.

MR. HUME: No further questions.

EXAMINATION BY

MR. GAFFEY:

Q. Just one or two. Your view that there  
was no other viable purchaser, would that view  
have changed if there were a \$5 billion  
immediate gain embedded in the transaction?  
Would you have had the view there might be

**HIGHLY CONFIDENTIAL - A. KIRK**  
**viable purchasers then?**

MR. HUME: Object to the form. Calls  
for speculation.

A. I think the -- there were -- we were  
open to a transaction with anybody, so if  
somebody was willing to take that kind of risk,  
I assume they would have showed up.

Q. Do you think they would have shown up  
if they were not told there was a \$5 billion  
haircut embedded in the transaction?

MR. KELLEY: Objection. Calls for  
speculation.

A. There was no certainty what that  
number was.

Q. If, in addition to whatever else was  
said about the deal publicly, it was also said  
that there was a \$5 billion haircut embedded in  
the transaction, do you think there would have  
been other viable purchasers, do you know?

MR. KELLEY: Objection. Calls for  
speculation.

A. I don't know.

Q. Are you able to say one way or the  
other?

**HIGHLY CONFIDENTIAL - A. KIRK**

A. Not really.

**Q. Okay. Do you know the basis of the estimated liabilities? You told Mr. Hume that you knew that the liabilities for comp and cure were estimated in some way. Do you know the basis for the estimation?**

A. I assume that the basis was -- I don't know the estimation. I knew it came from our Finance Department.

**Q. And your understanding at the time on the Friday when you were looking at this was that those were estimates based upon Lehman's books, correct?**

A. Upon the work that Lehman had done. Certain, you know, liabilities only come up in the nature a transaction like this, right? So you cancel contracts you have liabilities. So they would be contingent and necessarily not necessarily on your books prior to doing an acquisition like that.

So the -- it's -- it's not -- it's not completely -- it wouldn't be completely just what was actually recorded on the books. There would also be other liabilities that could be

**HIGHLY CONFIDENTIAL - A. KIRK**

triggered by the transaction itself.

**Q. And back to this issue of a viable purchaser, if it had been announced in addition to the other components of the deal that -- withdrawn.**

**You understood the assumed liabilities component of the deal to be a cost that Barclays would have in the transaction, correct?**

A. Correct.

**Q. If it had been publicly announced that the \$2 billion cost for compensation had been deliberately inflated by a billion dollars, that in your view would lower the actual cost for Barclays, correct?**

MR. KELLEY: Same objection.

A. If --

**Q. If it --**

A. If the answer is if it was inflated, it would lower the cost, the answer is yes, that's factual, I think.

**Q. If it had been announced in addition to other components of the deal that the assumed liability for compensation was deliberately inflated by a billion dollars, do you have a**

**HIGHLY CONFIDENTIAL - A. KIRK**

**view as to whether that might have attracted other viable purchasers?**

A. The market was so uncertain and there was so much financial stress in the list of potential purchasers that I'm not sure there was anybody who could have executed it no matter what they thought the gain was because the market would have viewed it as too risky, so to speak, and too strategically risky in many ways and too risky from a financial standpoint to approve them for any board to approve it.

**Q. In your view --**

A. No matter what the gain was.

**Q. Sure. And in your view, was there at any point where additional value in the deal might have attracted other viable purchasers?**

MR. HUME: Objection. Asked and answered.

A. None with the time to actually execute it.

**Q. And what was your role in determining whether or not there were other actual viable purchasers?**

A. I didn't have a role in that.

**HIGHLY CONFIDENTIAL - A. KIRK**

**Q. Did you have any role at all in that?**

A. No, that was the role of the FIG, the FIG bankers, Financial Institutions Group.

MR. GAFFEY: Thanks. Nothing further.

THE WITNESS: Okay.

MR. ROTHMAN: One question.

EXAMINATION BY

MR. ROTHMAN:

**Q. Fair to say that you don't know how the dispute -- the terms of the resolution of the dispute with the DTC on that Sunday night?**

MR. HUME: Objection. Vague and ambiguous.

MR. KELLEY: Asked and answered, too.

A. I don't know. Did you say is it fair to say I don't know the terms?

**Q. You don't know, yes.**

A. I only know it was described that there was 250 million put into the DTC account. I don't know the full terms. As I said, there may have been other terms that I was not aware of.

**Q. You don't know, beyond that 250 million that we discussed, you don't know one**



**HIGHLY CONFIDENTIAL - A. KIRK**  
way or the other what was supposed to happen to  
the unencumbered assets that had been in that  
DTC box, correct?

A. No, I don't know that.

MR. ROTHMAN: Thank you.

MR. HUME: Let me have follow up on  
that.

EXAMINATION BY

MR. HUME:

**Q. When you say you don't know the  
unencumbered assets in the DTC box, to the  
extent that they were identified by Mr. Lowitt  
as transferable assets, was it your  
understanding they were going to be transferred  
as part of the deal?**

(Continued on the next page to include  
the jurat.)

**HIGHLY CONFIDENTIAL - A. KIRK**

**MR. ROTHMAN: Objection to the form.**

**A. Yes.**

MR. HUME: No further questions.

THE WITNESS: I may have misunderstood  
the earlier question.

MR. GAFFEY: I'm going to have mercy.  
I have no follow-up questions.

(Time Noted: 3:06 P.M.)

oOo

\_\_\_\_\_  
ALEX KIRK

Subscribed and sworn to  
before me this day  
of 2009.

**HIGHLY CONFIDENTIAL - A. KIRK**  
CERTIFICATE  
STATE OF NEW YORK )

: ss

COUNTY OF NEW YORK)

I, Kathy S. Klepfer, a Registered  
Merit Reporter and Notary Public within and  
for the State of New York, do hereby  
certify:

That ALEX KIRK, the witness whose  
deposition is herein before set forth, was  
duly sworn by me and that such deposition is  
a true record of the testimony given by such  
witness.

I further certify that I am not  
related to any of the parties to this action  
by blood or marriage and that I am in no way  
interested in the outcome of this matter.

I further certify that neither the  
deponent nor a party requested a review of  
the transcript pursuant to Federal Rule of  
Civil Procedure 30(e) before the deposition  
was completed.

In witness whereof, I have hereunto  
set my hand this 31st day of August, 2009.

-----  
KATHY S. KLEPFER, RPR, RMR, CRR, CLR

**HIGHLY CONFIDENTIAL - A. KIRK**

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HIGHLY CONFIDENTIAL - M. KLEIN  
UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

In Re:

Chapter 11

LEHMAN BROTHERS Case No. 08-13555(JMP)  
HOLDINGS, INC., et al., (Jointly Administered)

Debtors.

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\* \* \*HIGHLY CONFIDENTIAL\* \* \*

DEPOSITION OF MICHAEL KLEIN

New York, New York

September 12, 2009

Reported by:

KATHY S. KLEPFER, RMR, RPR, CRR, CLR

JOB NO. 24546

Page 6	Page 7
<p>1 HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2 wait until I complete a question before you</p> <p>3 answer it, we'll get a cleaner transcript.</p> <p>4 A. Okay.</p> <p>5 Q. Okay?</p> <p>6 A. Thank you.</p> <p>7 MR. GAFFEY: As to confidentiality, we</p> <p>8 have a Confidentiality Stipulation and Order</p> <p>9 which has been so ordered by Judge Peck.</p> <p>10 Our agreement has been that all depositions,</p> <p>11 including depositions of non-parties, as it</p> <p>12 were, which includes Mr. Klein, are covered</p> <p>13 by that, and you will have the same rights</p> <p>14 that the party has under the confidentiality</p> <p>15 agreement. If you don't have a copy of it</p> <p>16 we'll get it.</p> <p>17 MR. BERNICK: That's agreeable and we</p> <p>18 appreciate that.</p> <p>19 MR. GAFFEY: I should add, too, we</p> <p>20 have had a convention over and above that</p> <p>21 confidentiality stip which has worked well</p> <p>22 for us up till now, which is that the entire</p> <p>23 deposition transcript is deemed to be --</p> <p>24 Is it highly confidential?</p> <p>25 MR. STERN: Highly confidential.</p>	<p>1 HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2 MR. GAFFEY: -- for some period of</p> <p>3 time, seven or ten days or so, and we'll</p> <p>4 sort that out, to give you time to sort of</p> <p>5 undesignate.</p> <p>6 MR. BERNICK: Great. Terrific.</p> <p>7 BY MR. GAFFEY:</p> <p>8 Q. Mr. Klein, by whom are you employed,</p> <p>9 sir?</p> <p>10 A. I'm not employed.</p> <p>11 Q. Okay. Was there a time when you</p> <p>12 worked at Citibank?</p> <p>13 A. Yes. To be correct, I have an ongoing</p> <p>14 consulting relationship with one company, so --</p> <p>15 but I'm not employed.</p> <p>16 Q. Okay. And with what company do you</p> <p>17 have an ongoing consulting relationship?</p> <p>18 A. With the Dow Chemical Company.</p> <p>19 Q. And was there a time when you were</p> <p>20 employed at Citibank?</p> <p>21 A. Yes.</p> <p>22 Q. Could you just give me the time</p> <p>23 periods? How long were you there?</p> <p>24 A. I was at Citi or the predecessors that</p> <p>25 amalgamated into Citi from 1985 until 2008.</p>
Page 8	Page 9
<p>1 HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2 Q. And what was the last position that</p> <p>3 you held at Citi?</p> <p>4 A. My final position was a position that</p> <p>5 had the title of Chairman of Institutional</p> <p>6 Clients Group, and in that regard, I had a</p> <p>7 series of responsibilities and relationships</p> <p>8 with clients, amongst them governments,</p> <p>9 corporations, et cetera.</p> <p>10 Q. And when did you leave Citi? What</p> <p>11 month of '08?</p> <p>12 A. I think my last official date was July</p> <p>13 21st. The third week in July.</p> <p>14 Q. Did there come a time during 2008</p> <p>15 where you were asked to become involved in any</p> <p>16 way in negotiations between Lehman and Barclays?</p> <p>17 A. Yes.</p> <p>18 Q. When did that occur?</p> <p>19 A. Approximately the Thursday before the</p> <p>20 weekend of the Lehman bankruptcy filing.</p> <p>21 Q. We have in front of you a blank</p> <p>22 calendar which you might want to refer to</p> <p>23 through the day, because in this case we have</p> <p>24 sort of shorthanded it to the Tuesday or the</p> <p>25 Wednesday, and that will help you pick</p>	<p>1 HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2 particular dates.</p> <p>3 Taking a look at that calendar, if you</p> <p>4 don't mind, you were referring to the Thursday?</p> <p>5 A. Before the Lehman bankruptcy.</p> <p>6 Q. Okay. So that would be Thursday, the</p> <p>7 11th?</p> <p>8 A. I believe that's so.</p> <p>9 Q. Would you describe for me, please, how</p> <p>10 you came to be involved, who asked you to be</p> <p>11 involved, and what you were asked to do?</p> <p>12 A. I was called by a gentleman named</p> <p>13 Hans-Jörg Rudloff at Barclays who asked me just</p> <p>14 in general where I was, what I was doing. It</p> <p>15 was a non-specific conversation. It was</p> <p>16 followed up by a call from Bob Diamond. Bob</p> <p>17 asked me if I could be available, given all that</p> <p>18 was going on with Lehman Brothers, to be of</p> <p>19 assistance to Barclays. And that was his</p> <p>20 request.</p> <p>21 Q. Now, at the time I understand you had</p> <p>22 some sort of restrictive covenant or a</p> <p>23 non-compete or a garden leave with regard to</p> <p>24 your departure from Citi; is that correct?</p> <p>25 A. That's right.</p>

Page 42	Page 43
<p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2   between the discussions that Barclays had to</p> <p>3   have with all of their own regulators to get</p> <p>4   sign-off to do anything, walking into this</p> <p>5   situation, should it be something that should be</p> <p>6   done.</p> <p>7           And then, third, and I'm sure there</p> <p>8   were other things as well, but how do you</p> <p>9   protect yourself from all of the risks that</p> <p>10   could emerge. It's one thing to try to make a</p> <p>11   transaction and fail. It's another thing to</p> <p>12   make a transaction and fail. And obviously</p> <p>13   Barclays had a very big global franchise that</p> <p>14   they would be putting at risk. So that was the,</p> <p>15   if you will, morning.</p> <p>16           We then went over to Lehman's</p> <p>17   building, the Seventh Avenue building, sometime</p> <p>18   in that afternoon and began to understand what</p> <p>19   potentially could be achievable. I think the --</p> <p>20   because there was no understanding of what a,</p> <p>21   quote, transaction was, it was fairly clear</p> <p>22   that, when we walked over, we were hoping to be</p> <p>23   able to effectively see if there was a way to do</p> <p>24   business with the Lehman people and do business</p> <p>25   as Lehman.</p>	<p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2           That was the hope behind it, beyond</p> <p>3   which there was very limited knowledge. There</p> <p>4   was a substantial amount of noise in the</p> <p>5   marketplace because the markets had dropped</p> <p>6   dramatically and there was a view that assets --</p> <p>7   that Lehman was just hemorrhaging assets so that</p> <p>8   no one knew what would be left, if you will,</p> <p>9   when we got over there, and then we went over to</p> <p>10   the meetings at Lehman.</p> <p>11           Q.   And before you went over to the</p> <p>12   meetings at Lehman, what, if any, parameters did</p> <p>13   Barclays come up with to answer the question of</p> <p>14   how it would protect itself?</p> <p>15           MR. BERNICK: Again, I know that Mr.</p> <p>16   Gaffey will concur with this. He's really</p> <p>17   asking these questions of you for what you</p> <p>18   know. So you're not here representing</p> <p>19   Barclays. You're here just being Michael</p> <p>20   Klein. Subject to that, what he's asking</p> <p>21   you about is what you know of about that</p> <p>22   question.</p> <p>23           Q.   Just I'll restate the question just so</p> <p>24   we can be efficient today.</p> <p>25           MR. BERNICK: Okay.</p>
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<p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2           Q.   At no point today do I want you to</p> <p>3   give me anything other than your personal</p> <p>4   knowledge, and I agree with Mr. Bernick: You're</p> <p>5   not here as a representative of Barclays. I'm</p> <p>6   not asking for the history, the global history</p> <p>7   of the transaction. I'm asking for what you</p> <p>8   know, what you saw, what you remember.</p> <p>9           MR. BERNICK: And the only reason I</p> <p>10   kicked off into that is because you asked</p> <p>11   him how did Barclays come up or what</p> <p>12   parameters did Barclays come up with, and it</p> <p>13   sounded like it was a bit broader.</p> <p>14           Q.   Let's assume, sir, so I don't have to</p> <p>15   say it ever time, that all my questions begin</p> <p>16   with "to your knowledge."</p> <p>17           So, to your knowledge, what parameters</p> <p>18   did Barclays come up to address the question of</p> <p>19   how it would protect itself?</p> <p>20           A.   Again, it's not very easy for me to</p> <p>21   reconstruct what at any moment in time even to</p> <p>22   my own knowledge existed. I do know that the</p> <p>23   concept of walking into the bankruptcy was one</p> <p>24   that there was a lot of trepidation and there</p> <p>25   was a sense that this was a -- if there was an</p>	<p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2   opportunity to have some of the right to do</p> <p>3   business in the areas that the -- that Lehman,</p> <p>4   old traditional Lehman, could offer, that would</p> <p>5   be great, but there was no appetite to take risk</p> <p>6   on things that could, if you will, come out of</p> <p>7   the woodwork or things that could bite. There</p> <p>8   just wasn't an ability to do that. That window,</p> <p>9   if you will, of being the whole owner of a, if</p> <p>10   you will, a business and a big balance sheet,</p> <p>11   the whole element, that was the weekend and had</p> <p>12   passed.</p> <p>13           Q.   Did Mr. Diamond express to you a view</p> <p>14   at that time that Barclays would not be willing</p> <p>15   to pay a premium or market price -- I beg your</p> <p>16   pardon. Did he express -- let me restate that</p> <p>17   question.</p> <p>18           Did Mr. Diamond express to you a view</p> <p>19   that Barclays would not be willing to pay a</p> <p>20   premium or book value as opposed to a distressed</p> <p>21   price for Lehman's assets?</p> <p>22           A.   I don't recall, but I don't think</p> <p>23   there was an asset -- it wasn't an asset</p> <p>24   discussion. We were going over to discuss how</p> <p>25   to do a business transaction along with the</p>

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ability to do business at Lehman. I don't know of any parameters other than that there was no sense as to whether there was going to be any assets. I mean, it wasn't a -- that wasn't the driver of certainly the -- either the roles or the conversations that I was party to.

Q. So you go over to Lehman. Tell me what happens there. Who meets with who?

A. Lehman was -- there were quite a lot of people at Lehman at the time, and again, in a similar vernacular, I didn't know many of them, if any of them.

There were a series of meetings, and I can't tell you who was in which meeting. The Cleary lawyers were there and the Weil lawyers were there. The Lehman professionals were there. The Barclays team were there. And for the better part of -- the early part was a question as to does this make any sense because the clock is running out. The message had been if you can't get something done and have the market believe something was going to be done, your people, your counterparties, your everything would be gone. So that was sort of

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one piece, as I recall.

The second piece is, with that in mind, what in fact can you do that is rapid enough to sustain anything of any value, because the view was that if you couldn't do something quickly, there was not only no value in Lehman as an entity on an ongoing basis, but there was going to be negative value because there's always going to be liabilities, but there was not going to be anything left for the business itself.

So the early part was just discussing was in fact there something that could be achieved. At some point in that day, and I -- I'm not by any stretch a bankruptcy expert -- let me be clearer, I'm not a bankruptcy expert all in terms of my knowledge.

So there were definitions and description amongst the lawyers of what potential paths could be taken, and there was then a discussion of, if we were going to be doing business as Lehman and step into the operational business, if you will, of that North American, how could you do that, how could you

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structure that, and then there was the purchase discussion, the purchase price negotiation on the purchase price. So that was the sort of path, if you will, of what took place.

Q. Was there a point on the Monday where, to your knowledge, was there a point on Monday where Barclays was given an opportunity to review books and records and otherwise do due diligence?

A. In the rooms I was in --

Q. Uh-huh.

A. -- there was not. That wasn't ongoing, and I -- there were multiple rooms, of course, that were taking place, but in the rooms that I and in my own role, my responsibility was to attempt to determine was there some kind of a transaction that could take place.

Q. So due diligence is not, or the fruits of it, is not within your portfolio?

A. I wasn't within my portfolio.

Q. You referred to purchase price negotiations. Were you involved in those?

A. I was involved in the discussions on the elements of the building and the elements of

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the cash paid for the rights to operate the business.

Q. Can you explain to me what you mean when you say "cash paid for the rights to operate the business"?

A. As best as I can.

Q. Sure.

A. The view was that the business didn't have any value as an ongoing business; that if you were going to step in and take on 10,000 employees and whatever liabilities to operate that business, when you had no idea of what revenues would be because there's no -- (A) you just have no knowledge, (B) you have no knowledge of what clients or customers think or feel of you at that point in time, you don't know who's going to stay and who's not going to stay, whether that's clients, customers counterparties, you don't know what had taken place in the week prior to that, it was a very -- there was a lot of reasons to believe that this was not an ongoing business.

So the view at the outset was there's no value for the ongoing business, so the



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<p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2   discussion as to what then cash was paid for,</p> <p>3   quote, the rights to do this business, which</p> <p>4   really was the transaction, is how do you end up</p> <p>5   stepping into those, if you will, operations of</p> <p>6   the brokerage business, as it turned out, the</p> <p>7   North American brokerage business. That's what</p> <p>8   I'm referring to, which became the \$250 million</p> <p>9   number.</p> <p>10   Q. That sort of anticipates my next</p> <p>11   question. If the deal was ultimately done,</p> <p>12   that's the price paid for such things as the</p> <p>13   right to use the name and license --</p> <p>14   A. Well --</p> <p>15       MR. BERNICK: Hang on. Let's let him</p> <p>16   finish the question.</p> <p>17   A. I'm sorry.</p> <p>18   Q. -- licenses, that sort of thing, not</p> <p>19   the price paid for particular assets that were</p> <p>20   purchased?</p> <p>21   A. No, that's right.</p> <p>22   Q. Were purchase price negotiations for</p> <p>23   particular assets that were purchased within</p> <p>24   your portfolio?</p> <p>25   A. No.</p>	<p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2   Q. Were they ever within your portfolio</p> <p>3   in the time period from Monday, September 15th,</p> <p>4   through closing on September 22nd?</p> <p>5   A. At the end of that week -- let me</p> <p>6   answer it very specifically because you said, I</p> <p>7   think, "pricing of specific assets," and at no</p> <p>8   point was pricing of specific assets in my</p> <p>9   domain.</p> <p>10       The concept of how the transaction</p> <p>11   changed in the later part of the week and, in</p> <p>12   addition to those changes, the then resulting</p> <p>13   shifts of assets and the, what I'll call the</p> <p>14   weekend of the JPMorgan-related issues I was</p> <p>15   brought into.</p> <p>16   Q. I'm going to come back to each of</p> <p>17   those pieces through the day today, but just so</p> <p>18   I can clarify this piece for the record, when</p> <p>19   you talk about the weekend of the</p> <p>20   JPMorgan-related issues were on the weekend of</p> <p>21   the 20th and the 21st after the approval</p> <p>22   hearing, correct?</p> <p>23   A. That's right.</p> <p>24       MR. GAFFEY: Can we take a ten-minute</p> <p>25   break?</p>
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<p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2       MR. BERNICK: Sure.</p> <p>3       (Recess; Time Noted: 11:37 A.M.)</p> <p>4       (Time Noted: 11:49 A.M.)</p> <p>5   BY MR. GAFFEY:</p> <p>6   Q. Before the break, Mr. Klein, we were</p> <p>7   talking briefly about negotiations concerning</p> <p>8   purchase price of assets. To your knowledge,</p> <p>9   was there a team at Barclays who on the Monday</p> <p>10   was negotiating with Lehman about the purchase</p> <p>11   price for particular assets?</p> <p>12       MR. BERNICK: Your question assumed</p> <p>13   that there was a separate purchase price.</p> <p>14       MR. GAFFEY: Yes, it does. Apart from</p> <p>15   what turned out to be the \$250 million,</p> <p>16   apart from the price for the right to do</p> <p>17   business.</p> <p>18       MR. BERNICK: Well, that also is an</p> <p>19   assumption that the 250 was just for the</p> <p>20   right to do business.</p> <p>21       MR. GAFFEY: Okay.</p> <p>22       MR. BERNICK: I don't know what's</p> <p>23   happened in all the other depositions, but</p> <p>24   that's not a predicate that exists because</p> <p>25   of what Mr. Klein has testified to this</p>	<p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2   morning.</p> <p>3   Q. You can answer the question, sir.</p> <p>4   A. I can only give you the specifics as</p> <p>5   to what I'm aware to, which we've discussed, but</p> <p>6   the discussion was the purchase of the rights to</p> <p>7   operate the business as the business existed,</p> <p>8   and there were the two principal components,</p> <p>9   which were the 250 million and then the</p> <p>10   buildings which Lehman specifically asked</p> <p>11   Barclays to buy for which the valuation was then</p> <p>12   set by Lehman on an as-occupied basis.</p> <p>13       The business was defined as the rights</p> <p>14   to do business and any assets and associated, if</p> <p>15   you will, directly associated, liabilities tied</p> <p>16   to that business that were necessary to operate</p> <p>17   the business. I'm not aware of separate</p> <p>18   specific negotiations.</p> <p>19   Q. Does there come a point on Monday or</p> <p>20   into the morning of Tuesday when an agreement is</p> <p>21   reached between Lehman and Barclays?</p> <p>22   A. I don't know the specific timing. An</p> <p>23   agreement was reached, yes.</p> <p>24   Q. Describe for me your understanding of</p> <p>25   the components of the agreement that was</p>



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2 described already.

3 Q. Let me show you what's previously been  
4 marked, Mr. Klein, as Deposition Exhibit 19.

5 Have you ever seen that document  
6 before?

7 A. Yes, I have.

8 Q. When did you first see that document?

9 A. I'm not certain when I first saw it.  
10 I've seen it recently, but I'm not sure when I  
11 first saw it.

12 Q. Apart from reviewing it maybe to  
13 prepare for your deposition, I'm more interested  
14 in at the time that we're talking about.

15 Did you see it during the week of the  
16 15th, which is when Lehman filed, and the  
17 closing of the deal on the 22nd?

18 A. I know I've seen it prior to the  
19 meeting I had in preparation, but I don't know  
20 specifically when I saw it.

21 Q. Do you recall if you had any  
22 discussions with people from Barclays about this  
23 document, Exhibit 19?

24 MR. BERNICK: At any time?

25 MR. GAFFEY: During the week.

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2 MR. BERNICK: During that week.

3 Q. Between the 15th and the 22nd.

4 A. I don't recall specific discussions  
5 about the document itself. I don't recall  
6 specific discussions.

7 Q. Did you ever attend any meetings that  
8 were attended by people from Lehman and Barclays  
9 at which this document was the subject of  
10 discussion?

11 A. Not that I can specifically recall;  
12 the document itself, not that I can specifically  
13 recall.

14 Q. Do you have any knowledge of what  
15 role, if any, this document played in the  
16 reaching of an agreement on the 16th of  
17 September, the Tuesday?

18 A. I don't, with the exception of saying  
19 that there's -- there was very little data that  
20 was (A) forthcoming to Barclays. The situation,  
21 as you know, was exceedingly fluid. (B) the  
22 data that was coming was, if it was dated by  
23 more than a few seconds, it was, given the  
24 market activity, it was changing, and given the,  
25 if you will, the melting iceberg that was

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2 ongoing at Lehman, it was outdated.

3 So there was a general sense that  
4 there wasn't really any data except the  
5 construct of what we were trying to achieve,  
6 which is buy the business as it was operating.  
7 But I don't know specifically -- I don't know  
8 who created this nor what they specifically used  
9 it for or, put differently, I don't recall who  
10 specifically created it or what it was  
11 specifically used for.

12 Q. You can put that document aside.  
13 Thanks.

14 To your knowledge, sir, do you know if  
15 part of the agreement that was reached between  
16 Lehman and Barclays included a negotiated  
17 discount of \$5 billion?

18 MR. BERNICK: Off what?

19 MR. GAFFEY: Off the value of the  
20 assets transferred.

21 MR. BERNICK: You can answer.

22 Q. Actually, withdraw that. Do you know,  
23 sir, if the agreement reached between Lehman and  
24 Barclays included a negotiated discount of \$5  
25 billion against the marks that Lehman had for

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2 particular securities?

3 A. I'm sorry, can you ask that for me one  
4 more time.

5 (Record read.)

6 A. Just so I'm clear, because you've used  
7 a couple of words here, there were, by the way,  
8 a lot of agreements reached at various different  
9 points in time, so are you referring to  
10 something in specific?

11 Q. I'm still on the agreement that was  
12 first reached on Tuesday, the 16th, the day it  
13 was announced.

14 A. I was, to my knowledge, never apprized  
15 of any \$5 billion discount at all.

16 Q. At any point during that week, from  
17 the 15th of September, the Monday when Lehman  
18 filed, through the 22nd, when the transaction  
19 closed, were you ever apprized of the discount?

20 MR. BERNICK: Again, the \$5 billion  
21 discount?

22 MR. GAFFEY: Any discount.

23 MR. BERNICK: I think that's pretty  
24 unclear. Are you talking about financial  
25 assets?

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MR. GAFFEY: I think objection to form will suffice.

Q. Can I have an answer to the question?

MR. BERNICK: I'm trying to be --

MR. GAFFEY: I appreciate it.

MR. BERNICK: -- have you be fair with the witness. I don't really have an objection. It doesn't make a difference to me or my client. What I'm trying to do is to help make sure that things are clear to Mr. Klein.

MR. GAFFEY: Okay.

Q. Can you answer the question, sir? Do you need it read back?

A. Yes, please.

(Record read.)

A. I don't really recognize the term "discount" in the way you're describing it.

Q. During the course of the week, from the 15th of September to the 22nd of September, did you have any conversations with John Varley of Barclays about the pricing of the transaction?

A. I don't, I don't recall. I don't

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recall that -- I don't recall that I was involved in conversations with John Varley.

Q. In the course of your conversations with anyone from Barclays during the week from the 15th of September through the 22nd of December, did anyone from Barclays ever tell you in sum or substance that Barclays was going to pay a discount in price for the securities it was purchasing from Lehman as part of the transaction?

MR. STERN: Objection to the form.

MR. BERNICK: I think you did misspeak. You said December.

MR. GAFFEY: Did I?

You're absolutely right.

Q. In the course of your conversations with anyone from Barclays during the week from the 15th of September through the 22nd of September, did anyone from Barclays ever tell you in sum or substance that Barclays was going to pay a discount in price for the securities it was purchasing from Lehman as part of the transaction?

MR. STERN: Objection to the form.

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MR. BERNICK: Answer if you can.

A. Your specific comment on the discount, no one -- I don't understand the concept of what you're saying by "discount."

Q. Part of what Barclays purchased from Lehman was a body of securities; is that correct?

A. Barclays -- at which point in time are we discussing?

Q. Let's go to the closing and work backwards. Part of what Barclays ultimately purchased from Lehman was a body of securities; is that correct?

A. The final transaction, as I understand it, was the purchase of a business, and then what had been the erasing, if you will, or the exchanging of a loan against collateral that that loan existed, and that exchange of the loan against the collateral is, in a sense, a purchase of long securities.

So, yes, at that end transaction there was a purchase of a business and then the exchange of a loan against assets.

Q. Now, let's wind back to when a deal is

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first reached. We're on Tuesday, September 16th. Was there a component of that deal that provided for the purchase of long securities?

A. As I understand the transaction, other than the building, which is effectively the long purchase, the remaining assets as described to me was the net business attached to the businesses purchased. I hope that answers the question.

Q. It does. Thank you.

On Monday, the 15th, and Tuesday, the 16th -- I'm at the day of the filing and the day the deal is announced -- were you involved in any way in separate price negotiations about the long position of securities that would be included in the transaction?

A. I really don't recall that I participated in -- I really don't recall that.

Q. In that same period, that Monday, the 15th, and Tuesday, the 16th, did you have discussions with anyone from Barclays about -- withdrawn.

On Monday, the 15th, and Tuesday, the 16th, did you have any discussions with Barclays

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<p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2   about the fact that one of its conditions for</p> <p>3   going forward was that the deal had to be</p> <p>4   capital-accretive to Barclays?</p> <p>5       A.   I'm sorry, could you ask that again?</p> <p>6   Can I read it or do you want to ask it again?</p> <p>7       Q.   You can read it or we can have it read</p> <p>8   back.</p> <p>9       MR. BERNICK: Just have it read back.</p> <p>10   This is not really an official transcript.</p> <p>11   I think it's accurate, but you should</p> <p>12   formally just let her read it back.</p> <p>13   (Record read.)</p> <p>14   A.   That specific term I'm not -- I don't</p> <p>15   have a recollection of that term being used.</p> <p>16   Q.   You have no recollection of Mr.</p> <p>17   Diamond ever using that term?</p> <p>18       MR. BERNICK: At any time?</p> <p>19       MR. GAFFEY: At any time with respect</p> <p>20   to this transaction.</p> <p>21   A.   That particular term, but you're</p> <p>22   giving me a very specific term, but no, I don't.</p> <p>23   Q.   Now, when a deal was reached on</p> <p>24   Tuesday and announced, did you have an</p> <p>25   understanding of what the structure of the</p>	<p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2   documented deal was?</p> <p>3       Let me ask you to take look at</p> <p>4   Deposition Exhibit 1, which you will see is</p> <p>5   entitled "Asset Purchase Agreement."</p> <p>6       A.   Yes.</p> <p>7       Q.   And let me put another question</p> <p>8   instead.</p> <p>9       Did you have an understanding on</p> <p>10   Tuesday, September 16th, that the structure of</p> <p>11   the deal was described as an Asset Purchase</p> <p>12   Agreement?</p> <p>13       MR. BERNICK: I think the question is,</p> <p>14   did you have an understanding that the</p> <p>15   transaction that had been agreed was an</p> <p>16   Asset Purchase Agreement, or styled that</p> <p>17   way, separate and apart from what he's</p> <p>18   looking at now as Exhibit 1.</p> <p>19       MR. GAFFEY: Correct.</p> <p>20       MR. BERNICK: Do you understand that,</p> <p>21   Michael?</p> <p>22   A.   I think, generally speaking, I</p> <p>23   understood that the estate could sell assets and</p> <p>24   that that was the form of the transaction.</p> <p>25   Q.   Now, your portfolio, as I'm</p>
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<p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2   understanding it, was essentially to deal with</p> <p>3   what the structure of the transaction was how</p> <p>4   this could be achieved?</p> <p>5       A.   At what point in time?</p> <p>6       Q.   Well, that's what I'm about to ask.</p> <p>7   Tuesday there's a deal announced. Had that, at</p> <p>8   least at that point, had that goal been reached?</p> <p>9   There was a structure, there was a proposed</p> <p>10   transaction that would, if successful, achieve</p> <p>11   the goal?</p> <p>12   A.   I'm sorry, you have asked sort of a</p> <p>13   couple of questions.</p> <p>14   Q.   I know.</p> <p>15   A.   I just want to be clear which question</p> <p>16   you want me to answer.</p> <p>17   Q.   Well, your task is to determine</p> <p>18   whether there's a structure that will work to</p> <p>19   achieve -- to effect a transaction, correct?</p> <p>20   A.   I ask you again at what time period?</p> <p>21   Because --</p> <p>22   Q.   Monday/Tuesday, 15th and 16th.</p> <p>23   A.   Monday/Tuesday, my role was, as a</p> <p>24   member of the team, to assist in determining</p> <p>25   whether a transaction was achievable. The</p>	<p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2   specific structural reference is more</p> <p>3   appropriate on that weekend because on that</p> <p>4   weekend is when the structural complexity of</p> <p>5   creating a new structure was the most relevant.</p> <p>6       On the Monday/Tuesday, there was a</p> <p>7   handful of hours, so I would say all parties</p> <p>8   were involved in attempting to determine what</p> <p>9   could be achieved or couldn't be achieved.</p> <p>10       My specific role was, as I described,</p> <p>11   on that aspect of discussions on the, quote,</p> <p>12   business that could be part of the transaction</p> <p>13   and in the form of that, as I said, 250 and the</p> <p>14   building purchase, principally. Again, it's a</p> <p>15   year ago and there were people running around</p> <p>16   rooms. The rooms were designated. That's the</p> <p>17   legal room. That's the -- but there were many</p> <p>18   people.</p> <p>19   Q.   Did you have an understanding on</p> <p>20   Tuesday, the 16th, when the deal was announced</p> <p>21   that part of it was that Barclays would assume</p> <p>22   certain liabilities?</p> <p>23   A.   Yes. Directly tied to the business,</p> <p>24   yes.</p> <p>25   Q.   Could you describe for me what your</p>

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understanding was of the liabilities that Barclays would assume?

A. As I understood it -- well, as I understand it now, thinking back, and again, it's hard to determine what I understood specifically or not, there was the specific liabilities and then general liabilities.

The specific liabilities were defined as the, quote, comp and cure discussions, separately the -- if you called them liabilities, the net short positions against assets because it was a net book. There was a general sense, at least in my recollection, that no matter how much you wanted to make this as clean and clear as to what you were purchasing, the concept and the fluidity of clients and customers and your ability to then go forward and undertake this business would be more costly because you are going to have to have 10,000 people, or whatever the people are. They're going to do day-to-day things, they're going to cost money, and there aren't going to be revenues, so those liabilities in terms of an expense base going forward, and then,

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separately, you would have clients that you would hope to do business with that may have had issues with Lehman that, even though they're not your legal issues, they become commercial issues for you.

So the concept of liabilities, as you've asked, you were walking into a situation where conceivably there could have been a lot of liabilities, but clarifying what they were at that point in time was a question of the -- what you could and then, separately and distinctly, how much risk the Barclays team was prepared to take relative to that opportunity.

Q. With respect to the specific liabilities for comp and cure that you mentioned, did you have any involvement in determining what the amounts of those specific liabilities would be?

A. No, I don't believe I had a specific -- certainly the, even the term "cure," to my knowledge, was a new term for me. I didn't set those numbers.

Q. Do you know who did?

A. To my knowledge, the cure payments

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were Lehman liabilities, so Lehman created that, if you will. With regard to the comp, I'm not clear who created that. I'm not clear on that.

Q. Just to close out that area, did you yourself engage in any discussions with folks at Lehman about these two specific liabilities for comp and cure?

A. I didn't have conversations that I can recall at all on comp with the Lehman professionals at all. The cure had to be explained to me because, again, I didn't know what it was, and it was explained to me as to what it was regarding the ongoing business expenses of the operation.

Q. Was it someone from Lehman who explained it to you?

A. There was a group of people. I sort of vaguely remember being in a very big room that looked like it was one of the dining rooms, and there was a group of people that -- I don't know how many were Lehman and how many were attorneys -- who were sort of describing that, because I just didn't understand it. It wasn't part of my -- so I don't know who all the

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specific people were that were explaining it.

Q. In that discussion, in that meeting with all those people in there, did anyone say anything to indicate to you how the quantum was reached for the cure amount as opposed to the purpose for the cure?

MR. BERNICK: I'm sorry, the --

MR. GAFFEY: The amount.

MR. BERNICK: What quantum?

Q. How the quantum of the liability would be assumed for cure?

A. They had a list of ongoing obligations.

Q. Did they have it there?

A. I didn't -- I never was shown a list.

Q. Now, did you have any discussions with the Barclays folks, separate from Lehman folks, about the amounts to be undertaken in these specific liabilities for comp and cure?

A. I don't --

MR. BERNICK: Again, your question assumes for this witness -- the problem I have is, what do you mean by "undertaken"? That sounds like a contract. I think you



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<p>1       HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2       don't have a predicate from this witness</p> <p>3       about what he understood the role of those</p> <p>4       two issues to be in the transaction that he</p> <p>5       personally was involved in.</p> <p>6       MR. GAFFEY: Can we read the question</p> <p>7       back, please?</p> <p>8       (Record read.)</p> <p>9       A. I don't remember specific</p> <p>10      conversations, except for one general</p> <p>11      conversation that was a conversation amongst</p> <p>12      lawyers to discuss the construct of comp, what</p> <p>13      "comp" meant. Did it mean comp, bonus? Did it</p> <p>14      mean payroll? Did it mean severance? I</p> <p>15      remember a general conversation about that.</p> <p>16      That's the only conversation that I have a</p> <p>17      general recollection of.</p> <p>18      Q. Did you come away from that</p> <p>19      conversation with an understanding of what</p> <p>20      "comp" meant?</p> <p>21      A. Well, I, you know, having come from an</p> <p>22      investment banking background and having a</p> <p>23      perspective on what sort of total compensation</p> <p>24      is, I had a perspective just generally that I</p> <p>25      went into and came away from. I didn't come</p>	<p>1       HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2       away from with any great new learning from that</p> <p>3       conversation.</p> <p>4       Q. Now, I want to move into the next</p> <p>5       couple of days of that week after a deal was</p> <p>6       announced. Has the deal changed during the</p> <p>7       week?</p> <p>8       THE WITNESS: Can I take a</p> <p>9       three-minute break?</p> <p>10      MR. GAFFEY: Absolutely.</p> <p>11      (Discussion off the record.)</p> <p>12      (Luncheon recess; Time Noted: 12:28</p> <p>13      P.M.)</p>
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<p>1       HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2       AFTERNOON SESSION</p> <p>3       (Time Noted: 1:20 P.M.)</p> <p>4       MICHAEL KLEIN, resumed and</p> <p>5       testified further as follows:</p> <p>6       EXAMINATION BY (Cont'd.)</p> <p>7       MR. GAFFEY:</p> <p>8       Q. Before the break, Mr. Klein, we</p> <p>9       were -- I think I asked you a question along the</p> <p>10      lines of whether the deal changed during the</p> <p>11      week, so let me ask you that.</p> <p>12      After the Asset Purchase Agreement</p> <p>13      that we looked at a moment ago was signed, did</p> <p>14      the deal change during the ensuing week?</p> <p>15      A. Yes, the transaction in certain senses</p> <p>16      changed. The main transaction, which was the</p> <p>17      business purchase, didn't change. The concept</p> <p>18      of buying the business, of operating the Lehman</p> <p>19      Brothers old Lehman North American brokerage</p> <p>20      business didn't change.</p> <p>21      What did change, however, was that</p> <p>22      during the week events occurred surrounding the</p> <p>23      various different assets and counterparties that</p> <p>24      under -- that were underlying the business that</p> <p>25      caused elements of the transaction to change,</p>	<p>1       HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2       but the base transaction, save the adjustment on</p> <p>3       the real estate value to reflect the valuation</p> <p>4       that came in, the base transaction and the</p> <p>5       business construct and what was driving that</p> <p>6       didn't change.</p> <p>7       Q. What were the elements of the deal</p> <p>8       that did change?</p> <p>9       A. The principal elements that changed</p> <p>10      were a recognition that the, effectively, the</p> <p>11      assets that were directly aligned and related</p> <p>12      positions directly aligned to the business were</p> <p>13      changing and that both volatility, valuations in</p> <p>14      the market, but, more importantly, other</p> <p>15      counterparties were taking possession of some of</p> <p>16      those.</p> <p>17      Separately, Barclays began to finance,</p> <p>18      if you will, some of what was the ongoing</p> <p>19      operations of Lehman, and that the change was</p> <p>20      that the construct of the transaction became the</p> <p>21      business purchase plus this very specific loan</p> <p>22      for asset hand-off, if you will, and then some</p> <p>23      elements of additional assets came into question</p> <p>24      or came into the transaction as part and parcel</p> <p>25      of those loan or collateral, if you will, the</p>

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movement in the asset positions and the Barclays loan.

Q. The assets that Lehman was to deliver that changed because of volatility or valuation or counterparties taking possession, let's take that piece first, did you have -- how did you learn about those?

A. I, somewhere just prior to that Friday, I was apprized, one, that the Barclays had been financing the business, the details of which I became more aware of later as part of the JPMorgan weekend; but, two, that the -- there had been meaningful problems in that Lehman in their delivering of what was the business that they intended to deliver had limitations, and the net result of which was what had been committed couldn't be delivered, as I understood it, and the result of which was there needed to be, one, both an understanding of could the business operate, how could the business operate, how would the business operate, and what was actually being transitioned.

Q. Actually, did you first learn about

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this situation on the Friday?

A. I can't recall specifically. I know that the issue became an issue post-Tuesday, at least my own focus was shifted to deal with a bigger set of questions that were on I think the minds of senior management: How do you deal with integration risk and all of the other elements that come with the transaction, and then, separately, what do they do with Europe and Asia?

So that was occurring during those couple of days, but sometime before Friday morning, and I don't know when specifically I became aware of it, I became briefed that we had a series of issues that had to be addressed that were very meaningful in terms of the completion of the transaction.

Q. Who gave you that briefing?

A. I don't know specifically. At this point I was dealing on a -- most of the basis of dealing were with either Archie Cox or Jonathan Hughes or Rich Ricci, but I can't say specifically who gave me the briefing or whether it came from attorneys involved. I just don't

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know specifically.

Q. And the loan for asset hand-off you were talking about, the Barclays financing of Lehman, did you have any more specific understanding of the nature of that financing?

A. I later learned, because of the JPMorgan-related matters, quite a lot. At the time, I wasn't party to those dialogues. I knew that there was an offer of support and I was then briefed on the quantum of the loan and the issue embedded in the size of capital that they had put up at that stage, but I was -- but that which I learned later about the JPMorgan and other elements of the Fed and so forth I learned subsequent to that.

Q. The financing that you're referring to, did you learn whether it was -- what its form was? Was it a secured loan? a Repurchase Agreement? anything like that?

MR. BERNICK: Whose financing?

MR. GAFFEY: The Barclays financing of Lehman.

A. I don't, even in hindsight, characterizing it specifically, I couldn't

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characterize it specifically.

Q. So what, if anything, were you asked to do in connection with this new set of problems?

A. I was asked specifically to -- well, let me back up for a moment.

The problems that occurred were of a magnitude that they impaired the going-forward nature of the transaction. The movements of assets and, of course, data was very hard to come by and very volatile, the markets had of course become even more volatile and even more risky. The transaction was now public, but by the same token, there was a real question as to what the deliverables, not just the deliverables in terms of pure assets, but could the business continue to operate, operate out of the building, operate with the people, operate with the systems, operate in that way.

The question, though, that was put directly on the table was, given that a substantial amount of the, quote, net book that was attached to the business that was the business transaction had gone away and the



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question put forward was, what do we do?

The first -- one of the discussions was, well, maybe we just don't have a transaction that has any assets at all. I mean, this is a business purpose. If the assets are getting taken by others in different ways, just do a business deal. And I think that's how I learned that there had been the loan that had then been provided.

The second part I was then asked to do was to make a specific request of the parties at Lehman to find more assets to rectify what had been the substantial movement and substantial reduction in the transaction that had taken place.

Q. Did you make the request of the parties at Lehman?

A. I made the request. I'm not sure that it was just myself who made it, but I was part of requests that were made. And I don't know who all was involved in sort of the receipt of those requests, but it resulted in a series of conversations on that Friday morning prior to the court.

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Q. Did you have a particular person on the Lehman side who was your point person?

A. Well, originally it was the Mark Shafir connectivity. That's the beginning. From that point forward, after the Tuesday event, it, first of all, became far more fluid in the sense that there was an agreement out there; secondly, there was no particular counterpoint at that point in time, and frankly, there was no need until that event occurred for there to be a specific counterpart for me. The others may have had, because of executional things that were taking place, other specific counterpoints, but I don't think I had -- I don't think I could define a specific counterpoint at that point.

Q. Did you learn that Shafir left during the week?

A. We did learn that Shafir had left during the week, which obviously made for complexity in just in that dealing.

Q. So describe for me as best you can, please, how, in what circumstances the request was made for more assets?

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A. Well, I can only describe what I'm aware of, and what I'm aware of is that the transaction of a net book which had long and shorts and could be managed over time had migrated in the two ways I described: One, substantial of those assets had been removed; secondly, it wasn't clear at that stage what assets had been necessarily moved into which pockets, but perhaps most importantly, because it was now a net asset purchase, it was a -- it was putting all of your capital up against just assets that you're buying in the midst of this market calamity, the \$45 billion of capital, which that was never -- that was never the contemplation of the transaction, to my briefing. To my briefing, we were stepping into the shoes of operating the business.

So the request was what do we do, and the first question was, is that -- are those assets sufficient for that loan, and that was the first debate. And to my knowledge, there was a fairly significant disagreement as to whether even the remaining assets were sufficient against the collateral of that loan.

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And I wasn't an evaluator of those assets or a participant in those evaluations, but there was that, if you will, debate over can we even get our loan proceeds back, so to speak, and there was a disagreement on that value. I was at one point in a room where that was communicated between different parties, that this -- there's a disagreement on that.

I'm not sure if I'm answering the question that you're --

Q. You were. Thank you.

A. The net effect of that was, because there was no fundamental agreement and there was both parties taking views, that the agreement was struck that the loan against the assets were essentially going to be equivalent in value, to my understanding.

The problem that that then created was, because Barclays was buying an ongoing business and, in buying an ongoing business, had expenses that would be coming and no likely revenues and significant losses during that period, as well as the liabilities that they were assuming that we've discussed previously,

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they had a problem in the sense that they now had \$45 billion of capital as a purchase, which was not the original intention, as opposed to what was a purchase and then net assets that came with the business. And they were put in a position where they would have to go back to both their board and their regulators with what was a substantial hit, if you will, not just from the original transaction but to their overall capital base. They couldn't close the transaction on that basis, as explained to me, and as explained to me, more assets were needed to fill that. And we delivered the message that, is there anything left that can fill this gap that has been created as a result, and that was the message we delivered.

Q. Who was it who -- let me just back up. Had you had any personal involvement in the decision that led to Barclays financing Lehman?

A. No, not that I'm aware of, no.

Q. Did you have any awareness about the fact that Barclays had decided to finance Lehman in this way at any time before these problems were outlined to you?

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obviously Shafir was gone at that point in time.

There was a -- as part of that rectification, I think Ian Lowitt came into play as well. I can't tell you that they were all in the room for that discussion, but those would be the principal participants that we dealt with as we tried to resolve this.

Q. In trying to resolve this, did you also deal with either Paolo Tonucci or Martin Kelly?

A. Not that I can recall. Frankly, I don't -- I don't recall even having heard the name Martin Kelly before, but I don't want to overstep my statement. I just don't recall.

Q. And this discussion that involved McDade and Kirk, who was there for the Barclays side?

A. Again, I want to be clear. As I said, McDade and Kirk were the individuals we were principally dealing with. I don't know who was specifically in the room when the first message was delivered that this was an issue or -- because this was very fluid.

MR. BERNICK: I have to tell you, Bob,

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A. In a general sense, and again, this is recollection of a short window in a general sense, they were trying to be supportive because once they announced the transaction, they were trying to be supportive to preserve value of the ongoing business.

The specifics of that, quantum and the form, as I said, I believe I learned -- well, I know I learned a lot over that following weekend, the 20th weekend, but prior to that, no, I was not -- I was not briefed on that.

Q. Now, you said that you were in a room where the disagreement about values was discussed?

A. Right.

Q. Who was present? Is this one meeting you're describing?

A. I'm only aware of one conversation --

Q. Okay.

A. -- that occurred on Friday that I was sort of in part of, and the only people at this stage that we were seeing or that I was seeing -- "we" is too broad -- from Lehman on a periodic basis was McDade and Alex Kirk, because

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you know, maybe it's clear to everybody else. You got into this discussion of meeting by talking about the discussion about differences in values, and I'm not sure that -- I don't know exactly what meeting the witness is talking about. He talked about a meeting where a request was made.

MR. GAFFEY: Let me see if I can clarify this.

Q. You spoke, Mr. Klein, about the fact that there was a fairly significant disagreement as to whether the collateral was sufficient, yes?

A. I said that there was a disagreement over the value of that collateral versus that loan.

Q. And you had not been involved in the valuation?

A. No.

Q. But that you found yourself in a room where there was some disagreement about whether the collateral was sufficient, and that was discussed?

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A. That's right.

Q. That's the meeting I'm asking about. Is this the meeting on Friday morning?

A. Again, I don't recall which specific. I know that on Friday we had to clean up the issues and or not, I mean, it was that much of a make-or-break event, and the issue as it had been described to me by my client was we have a problem in that this is, given the significant removal of positions and obviously the impact as a result on the, quote, business deal, we need to be very clear that (A) this is a different -- putting 45 billion of cash capital now to buy assets and, secondly, we don't have the same value. So I was instructed to go in and express that we needed more assets. So that's the meeting I'm referring to.

Q. And who gave you those directions?

A. At this stage, the principal people I was dealing with were Rich Ricci and Archie Cox, and Jonathan Hughes from a legal perspective was around most of the time during this time period, and the direction would have come from some subset of that team.

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term, but the back end of Barclays in terms of how they were looking at the construct for themselves, I don't know what the accounting was, but I was told you need to go in and get more assets, this won't work.

And I think there was a great degree of trepidation. It was already complicated enough because the integration issues. It was already complicated enough because of the market issues. It was now public. It was complicated enough because of the Europe, Asia, everything separating away. It was now already a very complicated event to have what was then this meaningful change and, thus, have a hit to them and that additional incremental risk, and in addition, owning the risk on disposing of what were this 45 billion of securities, there was quite a lot of fear, and at that point there was a sense that this transaction just might not occur.

Now, of course, that happened many times over the couple of weeks, the sense that this might not occur, but it was very acute, and I was told you need to -- we need to make it

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Q. So did you make that request? Did you come in and say -- did you, in sum or substance, did you make it known to Lehman that you needed more value?

A. Well, I made it known to the parties that were involved that there needed to be more assets, because if there weren't more assets, the transaction couldn't take place.

Now, to say "I," it was made known and I was part of discussions that were around what could solve that gap. I don't know that I was the person that specifically stated it or not.

Q. How big a gap had to be made up?

A. The quantification of what I was told was that we had an understanding that the value of the assets, if you will, the loan, the \$45 billion loan, was -- the collateral base could not be assured that that would solve that; that, secondly, we then needed to go and get more assets. No one gave me an instruction that said you need to get X or Y, but we need to go get more.

I wasn't, because I wasn't involved in the, if you will, the -- I may not use the right

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very clear if there's not other assets, we can't get this done.

Q. You have to make it very clear that if there are not more assets, this won't get done, how do you do that without being able to tell Lehman this is how much more we need? Does that present an obstacle here?

A. I don't want to hypothesize.

Q. Let me try this another way. Your instructions are to make it clear to Lehman that if there are not more assets to be added, that it's possible the deal won't get done; is that correct?

A. My recollection of both those discussions and at least the instructions that I got were this transaction was going to fail because of what was the diminution in the original plan. Now, that's -- those are the communications that I was part of.

Q. And were you part of the communications to Lehman of the fact that additional assets had to be added?

A. I think I said that I was in a room where that was discussed, and again, I don't

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know who specifically made which statements, but I was in a room in that and it was made clear you need to find what else there may be because this is a problem.

Q. And in the room where these discussions were had, was anything communicated as to how much more there needed to be added in order for the deal to close?

A. I'm not aware that a specific number was put forward. I'm not -- I'm not clear that a specific number was put forward and I'm not clear that there was a sense that there was any other assets and I think it was a good faith, which is why I raised the point earlier that this question that certainly I had put forward, should we do something without assets, which, as I said, caused me to learn a bit more about what was this loan question. But no, I'm not aware of a specific number that was put forward.

Q. You mentioned the number \$45 billion. Was that your understanding of the amount that had been advanced by Barclays to Lehman in this financing?

A. My recollection of the, quote, loan

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that Barclays had exposure was 45, although for some reason I have in my mind that occasionally it was 45.5, but I may not be getting that exactly correct.

Q. Did you have an understanding one way or another as to whether the loan of 45 or 45.5 was collateralized by security in excess of the amount lent?

A. I was only briefed that it was collateralized, that it was a secure -- that it had securities attached to it. I didn't get into the particular details, but I will say that what I was briefed on as part of this was that there was real concern on the Barclays side that the assets that they were going to be buying could not be valued or liquidated at that price, at that value.

Q. Did you gain an understanding what the Lehman side of the story was? What were they saying with respect to the value of the assets?

A. In the rooms I was in -- and again, I can only recollect this being occurring in or around the frenzy, if you will, or the rush -- best way for me to say it is I don't remember

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other than the sort of Friday discussions that we're discussing.

There could have been other discussions that I'm not aware of that there was a disagreement as to whether it was -- and the disagreement was a plus or minus the 45. This was a, you know, do you -- are you selling these today? Are you selling these tomorrow? Are you holding them for a week, and if you're holding them for the week, are they worth more than the 45?

I didn't remember anybody saying this is worth 90 and this is worth zero. I think it was -- and the rationale and the reason why the agreement was reached that it was worth the loan was it was a plus-or-minus discussion point. But I wasn't part of the valuation on either side, so I don't, I mean, I don't know what the underlying background of those statements were.

Q. I understand that you're not -- you don't have the underlying data as to who's right or who's wrong in the discussions, but my question goes to what was the nature of the discussion that you heard.

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Was there a range of disagreement that you heard between Lehman and Barclays as to the value of the underlying collateral?

A. I only, as I think I said, I think the only thing I can recollect was that they had differences as to whether you sold it today, held it for a period of time, and it was a plus or minus the loan amount. It was not -- people weren't -- this wasn't, to my knowledge, because it certainly didn't involve me, a ten-hour discussion over, you know, multiple different you're here and I'm here. This was there's a difference of opinion, what do we do, and a general understanding that it's not that big of a difference, so let's move forward because we have to move forward. But that's just the part that I was party to.

Q. I need to push for a little more detail on this, the scope of the difference, if I could. The request, the demand, whatever verb you want to use, is made from Barclays to Lehman to add more assets so that the deal can close, correct?

A. The -- not precisely correct. There



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was a clear understanding that the, quote, net book value transaction could not occur, so what you had was a loan against assets. There was a message that that loan might not be fully satisfied by those assets and there was a difference of opinion, plus or minus.

Secondarily, there was a view that because of all of the risk in liability and the losses that were likely to occur, there needed to be more assets from Barclays' perspective to complete the transaction. So those messages were messages that were delivered and I was party to at least one conversation on those subjects.

Q. And a while ago you told me one of the issues was that it was probable that Barclays was going to have expenses after the transaction. Was the request for more assets to cover those expenses?

MR. BERNICK: I think it's unclear what the expenses were that the witness was referring to with his prior answer.

MR. GAFFEY: That's a good point.

Q. What were the nature of the expenses

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that were at issue?

A. As I understand it, the -- and I wasn't -- there was a whole team of other bankers that were working for Barclays and doing work for board and board presentations and so forth, that wasn't my agreement. But in looking at this transaction, one had to look at the accounting day one and going forward, and clearly in a world where there's focus on capital and focus from the FSA, potential both day one as well as long-term losses were important.

My understanding was that there would be people that were being employed and it's not clear what the revenue streams would have been going forward. So when I say expenses, there were just operations of the business that -- because you wouldn't be up and running.

Now, that became more acute even later on June 20th because of the JPMorgan event and the shutdown, but that's what I was referring to.

Q. So this might be a bit simplistic for me to say, but was the idea that now that

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Barclays needed to have some, at closing, needed to have some equity to support its ongoing expenses once it took over the business?

MR. BERNICK: Answer that question, if you can. You've got equity, ongoing expense, continuation of business. I don't want to -- you just answer that if you can.

A. Maybe ask it again because I -- does someone want to --

Q. Was the idea now that Barclays needed to have some, at closing, needed to have equity to support its ongoing expenses once it took over the business?

A. I wouldn't -- I don't think I would characterize it that way. I wouldn't characterize it that way. The transaction from Tuesday onward changed meaningfully, and what I was told was that, because of that reduction in the assets and in the asset value, the transaction didn't work for my client and that, as such, I had to work with Lehman to get more assets as part of that.

How that all fit into what was the look, if you will, that Barclays had, you'd have

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to ask the Barclays folks. The direction I got was that this change was meaningful enough that it had to be fixed.

Q. So your job is go get more?

A. That's right.

Q. And you don't have knowledge as to what Barclays' analysis was of why it needed more? You understand --

MR. BERNICK: I --

MR. STERN: Objection to the form.

Q. Your instructions from your client are go to Lehman and get more assets, correct?

A. My instructions from the client were this is a very big change, the buying an ongoing business with a net book has now changed, because given what's taken place with counterparties taking assets, given what's taking place, we now don't have that transaction. It's now become a far greater riskier event for them in that they're putting up this \$45 billion of capital and buying long assets and no one wants to buy that much long assets. This wasn't intended to be an asset transaction. It was a business that they were



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stepping into.

The concept of buying long assets in that market was great risk, and one had to look at how I value it and how I sell it. That was sort of one comment that was given to me, and the other comment was, given the moving pieces that had taken place with this and given this risk, we need more assets as part of the transaction to replace what had been taken out of the transaction for us to move forward. And that's the task that I embarked upon.

Q. And no one from Barclays tells you how many more assets are needed to replace what had been taken out of the transaction? I'm pushing for a target or a number if you have one here.

A. I don't -- one, let me just say I'm trying to recollect as much as I can recollect.

Q. I understand.

A. Two, I was a part of a team which I had sort of narrow responsibility. Third, I wasn't running any kind of Barclays pro forma model nor was I doing those presentations to the board. So it's not a, you know, it wasn't part of what I was doing.

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The concept of this is a very big

problem when your client says this is a very big problem and you're told to help go solve that problem, you go solve that problem. The quantum of that problem, I think as the assets came forward, became clearer as to when I got responses that, "Here's what's available, can this get us over the finish line?" became clearer, but I don't recall someone saying, "I need to get" -- perhaps I'm not recollecting every conversation. I just don't remember somebody saying, "I need to get ..."

Q. Need to get a particular amount?

A. Yeah.

Q. Did anyone on the Lehman side of this dialogue ask how much more does Barclays need?

A. I recall the principal focus that was going on at Lehman was, here's what we have, does this help, and I think it was a real -- it seemed to me in good faith they were trying quite hard to find what was there, and basically the two things they found were the two things they put on the table, which were this so-called bag of hammers, as it was related, and then this

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custodial account balance.

Q. I'm going to ask you to solve one of the great mysteries in the case. Do you know who used the phrase "bag of hammers"?

A. It's -- I had never heard it before. It has to be a trading term, so I'm presuming it came from one of those two, either Bart or Alex. I don't -- I wouldn't want to attribute such a --

Q. It's not a bad phrase. I've just been wondering who was its author.

Were more assets added to the deal?

A. Well, let me be specific. Substantial assets were reduced from the transaction, but from the point of the Friday discussion, there were those two asset categories brought into the scope of the transaction.

Q. Okay.

A. So there were certainly not more assets added on an additional basis, but those two categories were brought in to solve the problem at hand.

Q. What was the value in total of those two categories?

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A. I don't know today nor do I know then what the real value is of those.

Q. Did you have a view at the time as to what the value was that was added on the Friday?

A. I only know what was told to me. I don't know what was the reality of it because I never saw any of the securities or the analysis. I was told that the bag of hammers was 1.9, as I recall, and I was told that there would be more than a million and potentially more than a million and a half in this custodial account.

That being said, to be quite precise, there was also an e-mail given that described the specific agreement and willingness, I think by an S.E.C. official, to release a number that was more like 750 of that custodial account. So my understanding of the value that was dealt with as part of that conversation would be those components, and those components then had to be digested as: Do they exist? What do they mean?

I didn't have any involvement in the work as to do they exist, what do they mean, what is a bag of hammers, what is that involved in, but in discussions with my client, their

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determination then was that was suitable in order to go forward.

So, to your question before, it became then clearer to me what the gap was because those were suitable to solve that in that morning.

Q. The last part of your answer, though, sir, is an inference. Did your client tell you that had been the gap or you inferred --

A. No.

Q. -- from the fact that they said they would go forward that it was?

A. There was an agreement to go forward. That's -- there's -- I don't recall that I saw the accounting before or after or subsequent for it, so I don't know what their internal machinations or gap was, but when I delivered that as part of the discussions with the team and it was discussed, and the lawyers then reviewed what that meant, and I tried to determine if I can figure out exactly what time each of those -- I just can't figure out when each of these things occurred, but certainly before the bankruptcy court that -- those two

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asset discussions came into play. Barclays was prepared to go forward with the transaction, which was the relevant issue at hand.

Q. Did you attend the bankruptcy hearing?

A. I did attend the Friday bankruptcy hearing.

Q. Correct.

A. That's the only one I would have attended, yes.

Q. And the bankruptcy hearing took place in the late afternoon on Friday? It started in the late afternoon on Friday, correct?

A. I don't know specific time, but yeah.

Q. Was the issue resolved before you left to go to bankruptcy court?

A. Certainly in concept I'm aware that there had been an agreement reached, otherwise there was no business to go to bankruptcy court. Anything that happened between my leaving and going down to court I can't tell you, but there was an agreement reached.

Q. That's a fair comment. I guess there's two pieces to this. One is the agreement reached in concept to add more assets,

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and then, secondly, there's the point where your client says enough assets have been added, we'll go forward. My question goes to the second part.

A. My recollection of my own sort of whereabouts was I was told that that worked and that we should go down to court to get it done.

Q. Now, just to clarify a little piece of your testimony, you were talking before about the funds that the S.E.C. had to -- the release the S.E.C. had to approve, you were speaking in terms of millions. Did you mean to say you were told there would be a billion to a billion and a half?

MR. BERNICK: Wait. You said the release that the S.E.C. had to approve.

MR. GAFFEY: Let me put some terminology in the here.

Q. The custodial accounts you were talking about, does the phrase "15c3" ring a bell?

A. It does, because I remember being confused as to that political action committee other thing, which is what -- somebody may know

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what that is, but I --

Q. You joined everybody else in the room. We've all learned what 15c3 is in the last couple of weeks. But you recall the term "15c3 funds" to refer to --

A. I do.

Q. And the amount of 15c3 funds that was at issue was in the billions, not millions?

A. In the billions.

Q. A billion to a billion and a half?

A. A billion to 2 billion at one point, but there was an e-mail, and I only remember it because there were so few pieces of actual data that had been sort of handed in any meeting that I was part of, but I just remember that that e-mail existed and that there was a reference to somebody from the S.E.C. agreeing that a certain amount could be released.

And I have a recollection, although I don't have it specifically and I haven't subsequently seen that e-mail, I don't think I've seen that e-mail since that moment, was that it was at least 750, but I don't -- 750 million, at least 750 million.

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2 to be careful, because the term "OCC" and all of  
3 the different initials came up at various points  
4 in time. I just don't specifically recollect an  
5 OCC discussion. I just don't specifically  
6 recollect that.

7 Q. As a general matter, the effort to  
8 find additional assets, does it continue on  
9 Saturday and Sunday, the 20th and 21st?

10 A. No, not that I -- I was not --

11 Q. As far as you know.

12 A. As far as I know, the only directional  
13 asset change, as far as I understand -- well,  
14 let me back up. Leaving aside every issue  
15 relating to what took place with the JPMorgan  
16 and the shutting down of the business, which  
17 later became very clear, leaving aside that for  
18 a moment, which may be hard to do, but it was  
19 not part of my understanding or vernacular  
20 leading into the bankruptcy Friday event, so  
21 leaving aside that as to the core transaction  
22 between the business transaction between  
23 Barclays and Lehman, which was the 250 plus the  
24 buildings, the related assets attached to it,  
25 the changes that were made were the changes that

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2 occurred Tuesday to Friday.

3 Subsequent to that, there was a -- or,  
4 somewhere on the Friday time period late, I  
5 think, the appraisals were delivered, so there  
6 was a change in value in the real estate as the  
7 splitting of the two appraisals took place. The  
8 only thing that I can think of right now, and  
9 maybe I'm -- but the only thing I can think of  
10 right now is the 15c3 give-back.

11 So there was no new assets being  
12 searched for. In addition, there was some  
13 discussion over, quote, a brokerage fee  
14 additional discount on the real estate, and that  
15 became a -- that became a contentious point, so  
16 Barclays gave up on that, quote, discount.  
17 Those are the only elements that I can recall,  
18 again, except for the moving pieces relating to  
19 solving the JPMorgan-related matter.

20 Q. In your discussions with your client  
21 about the need for additional value to be added  
22 on the Thursday or the Friday, what we've been  
23 talking about, did Barclays in sum or substance  
24 tell you that they needed a buffer of some kind?

25 A. I don't think -- I don't think the

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2 term "buffer" -- I don't think I ever recollect  
3 the term "buffer" being used.

4 Q. Is it fair to say that your  
5 understanding by Friday is that because of this  
6 financing, this loan that you have talked about,  
7 that the mechanism of the deal had changed?

8 A. The basic transaction parameters to  
9 buy the business hadn't changed. The purpose  
10 from Monday onward was to step into the shoes of  
11 operating the Lehman, if you will, North  
12 American business, obviously being clear that  
13 some of the activities, including customer  
14 activities and all those that occurred before  
15 Barclays was not going to take part in, but the  
16 business, ongoing business, that transaction  
17 didn't change.

18 So the sum and substance of the  
19 transaction that was the meaningful transaction  
20 didn't change. What happened was the related  
21 assets that were going to come with those  
22 businesses effectively went away, so there then  
23 was this incremental additional event that took  
24 place, which I have always thought of as then  
25 being something different, which was you now

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2 have a loan that you have to satisfy the loan  
3 and you are going long 45 billion of securities  
4 in this marketplace. So the main transaction  
5 and the substance of that transaction didn't  
6 change, it's just that the related assets that  
7 would have come with it were no longer the same  
8 or comprehensible and a, if you will, distinct  
9 event in terms of the loan and the collateral  
10 for that loan was undertaken.

11 That's how I understand it. Now, that  
12 may just be how I understand it.

13 Q. To your knowledge, your personal  
14 knowledge, were these differences regarding the  
15 related assets documented in any way? Was there  
16 a written agreement reached?

17 MR. BERNICK: I'm sorry, when you say  
18 "related assets," I don't understand what  
19 your focus is now.

20 Q. This addition of value on Friday, were  
21 any written agreements, to your knowledge,  
22 reached with respect to the addition of these  
23 assets?

24 A. Which assets are you specifically  
25 referring to now?

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A. I don't think I did. I don't --

Do you remember where the closing was?  
Maybe that will help me.

Q. I don't know. I know it was on Monday morning, very early Monday morning.

A. I don't think I was physically there at the closing. I don't recall being there.

Q. And just to sort of close out a couple of areas, I think I heard you say before, but I want to be clear on that, you were not involved in any of the presentations made to the Barclays board about this transaction; is that right?

A. No. No. There had been, early on on the -- at the very beginning of the week on the Thursday I believe there was a board call that I sat in and listened to. Beyond that, I wasn't party to board presentations, and I don't recall seeing the board materials either that were presented beyond that.

So the Thursday -- I think it could have been Thursday, it could have been Friday -- conversation was on that early structure that we discussed, which related to the Lehman/Spinco separation, the sort of pre-bankruptcy version.

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Q. You yourself didn't make any presentation to the Barclays board? You weren't there?

A. There might have been a question put to me. I don't -- I don't believe that I was called upon. I certainly, because I was just a consultant, a person, and because they had a series of other bankers that were giving opinions and doing work and corporate brokers that were doing -- they had other people doing things, I wasn't --

Q. I'm putting before you, Mr. Klein, what previously has been marked as Exhibit 381, an e-mail chain that starts on the second page with an e-mail from you to Rich Ricci dated Friday, September 19, at 21:31 that says, "Rich, three-ring circus. Two overflow rooms."

Could you read, sir, up that chain sufficiently to sort of familiarize yourself with that.

(Document review.)

A. Okay.

Q. Just in terms of the where and when of this, I'm assuming from the time and the date

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that you're in the bankruptcy court when this e-mail exchange is taking place; is that right?  
This will put you on the Friday night.

A. I think it would have to be.

Q. And is it correct, then, that Mr. Ricci was not in the bankruptcy court?

A. I don't believe he was.

Q. And then the next up in the chain is an e-mail from Mr. Ricci to you saying, "Alex tells me they're killing us on 1.9 bucket and not paying anything for it. What gives?"

Can you give me any greater detail of what that's a reference to?

A. I think, as you see my next e-mail, I don't follow. I don't -- that wasn't a conversation that I had been in that he was relating to.

Q. You also say, "I don't follow. We are being given 1.9 billion of face." What's the 1.9 billion that you're referring to?

A. The only 1.9 that I'm aware is the bag of hammers. The only 1.9 that I'm aware of in the transaction.

Q. And then what follows in the two

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subsequent e-mails are, Ricci to you: "He told me creditors were squawking. Let's get it then." And then you to Ricci: "We are meeting creditors shortly on this."

Do you see that interchange?

A. I do, yes.

Q. Can you give me any more detail of what's meant or what you understood to be meant when Mr. Ricci wrote that the creditors were squawking?

A. I don't, because I don't know -- I don't -- I don't know the Alex Kirk conversation. I do know that during the court the Weil team pulled a bunch of folks aside, including creditor folks, to explain the transaction in sort of elongated, elaborate sidebar.

So I assume that that's what my comment back is referring to, but I don't -- I wasn't aware of what the Alex conversation was because I wasn't party to that.

Q. Did you participate in the elongated sidebar?

A. No, I was in the -- it was a very -- I



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hadn't been to bankruptcy court before. I was in the very, very last row.

Q. I can tell that from your first note here: "Three-ring circus."

A. And there were people calling in as well, which I was -- I had never seen in court before. But I was in the very last row, and as a result, I didn't have the ability physically to get to the front.

So the sidebar conversation that took place, there had been I think a discussion that the lawyer from Weil would brief various parties prior to the event, which they did in that sidebar, but I was not -- I don't think I was physically there because I think I was physically separated, I believe.

Q. Could you hear what was said?

A. I -- no, I was -- I was literally in the last row.

Q. So you know there was a sidebar, but you have no personal knowledge of what was said in that sidebar conversation?

A. I was told that there would be a full debrief that was sort of part of what they had

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planned. I mean, I left and went down to the court. I was told that they would come down to the court, that they would physically debrief, and then there would be a hearing.

So I suspect that that's what that's referring to. My, best as I can recollect, is that's what that's referring to, but I don't -- I wasn't party to that.

Q. Was there a point when you arrived at bankruptcy court where you gave a briefing to lawyers for either Lehman or Barclays about the then current status of the agreement?

A. I don't -- I don't think -- I don't believe that I -- I don't know. I don't know. I don't know who -- I rode down by subway with this chap Gerard LaRocca, who I hadn't known before, who knew the subway system quite well, and then I went in and was pulled to the back and I sat with Archie Cox and everybody else was up in the front.

I don't really recall who I spoke to when I walked in. The only substantive thing that I was briefed on that I know about was the -- this agreement on the splitting the

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difference on the real estate value because I had to step out and call -- I think I called Rich to tell him and make sure he signed off on that because that was a, sort of an open issue.

Q. You didn't ride down to court in the car with Mr. McDade?

A. No. I definitely took the subway.

Q. Mr. Klein, I'm putting before you what we previously marked as Deposition Exhibit 382. Take a look through it, please.

(Document review.)

A. Okay.

Q. Now, we've moved, just by way of date, we have moved now to Saturday, the 20th, and the earliest e-mail here is on Saturday evening at 8:44, where you write to Mr. Ricci and some others: "Team, we need a brief call with Rich, subject to his schedule, to review the language regarding the expense accruals and to ensure that BarCap has appropriate flexibility to run their business as they deem appropriate."

What language regarding expense accruals were you referring to in this e-mail?

A. I don't remember specifically the

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e-mail, but I do recall a conversation I think we talked about earlier today where the lawyers were describing the definition of "compensation."

That's the only conversation that I recall that would have had lawyers and otherwise. I don't remember sending this specific e-mail, but that's the only conversation I can recall that would have been related.

Q. And can you add any more detail beyond the e-mail, sir, to what you would have meant regarding flexibility, "appropriate flexibility for Barclays to run their business"?

A. I can't. Rich was, at this stage, the principal client and he asked me to arrange a call with people that were involved and I arranged the call, so I can't -- I can't give you anything more.

Q. Beyond arranging the call, Rich Ricci is the principal client, but beyond arranging the call, did you have any involvement of that issue -- involvement in that issue, that is, the expense accruals and BarCap's --



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A. No. No. No. No. The only subject matter that I'm aware of that was covered was this, you know, definition of "compensation." That's the only thing that I'm aware of at all.

Q. Now, do you know how much value was transferred to Barclays in the deal once the issues were resolved with the addition of the bag of hammers and the 15c3?

MR. BERNICK: I think you --

A. I don't understand the question.

Q. I'm looking for a total here. Do you know how much value was agreed to be transferred to Barclays?

MR. BERNICK: Go ahead and answer it if you can. "Value" is a judgmental thing, so if you can give it some factual context, that would be helpful.

A. I don't really view that there was, quote, value transferred. If you're referring to the Friday events --

Q. Uh-huh.

A. -- where there was the clarification of the issues relating to the assets going away and this 45 billion loan and then the bag of

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hammers and so forth, I don't view that as, quote, value transferred.

I view that there was a hole in the transaction and that hole was filled, and the only actions that occurred that would have filled that were the bag of hammers and the 15c3. As I said, I think subsequently there was the change in the real estate midpoint valuation, and then subsequent there was the give-back of the certain 15c3.

So the total value that was sort of in those events can be quantified, but your question, which said the total value transferred to Barclays, I don't think there was total value transferred to Barclays.

Q. My question now is -- I'm away from the real estate, okay. Put the real estate aside for a moment. In terms of securities transferred, filling the hole, as it were, that you talked about, do you have knowledge of the number, the value of the securities?

A. I don't have --

MR. BERNICK: Go back and look at your question, Bob. It mixes the idea of filling

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the hole, which he's already answered, with value transferred, which may -- or, securities transferred, which may go way beyond filling the hole. So, which one are you asking about?

MR. GAFFEY: I'm asking about the value of the securities, including that which was added into the hole, the value of the securities.

MR. BERNICK: So you want total value, the total value of the securities that Barclays got in this transaction?

MR. GAFFEY: Yes.

MR. BERNICK: If you can answer that. You're not being asked to answer that question as an expert, Mr. Klein. This is just purely a question about what you factually know in this deposition.

A. I'm always very sensitive when you use the term "value" because "value" has a -- there's a definition that assumes that it has -- that is the worth, that is the approximation. I don't have a view of what the approximation of the, quote, value of that was.

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I have the views that was expressed at that moment as to what the values were of the various different components of the transaction, and I have expressed those I think in prior parts of this, but I don't -- I don't have a, quote, valuation of the assets that were -- I've given you the componentry of what was disclosed as numbers, but I don't -- neither have I done a valuation nor do I have a valuation on them.

I don't know if I'm answering your question.

Q. Yeah, I see the issue with value, valuation and it being somewhat judgmental. Let me ask you this: Did you have a view, did you have a view on the Friday once the bag -- you know, once the additional assets had been added, the 15c3 and the other assets, what the -- did you have a view of what the value was?

A. I have to be as clear as I can. I had never heard the term "bag of hammers." I never saw a list of securities. So I had no knowledge nor could I have, frankly, a whole lot of confidence into exactly what that would have resulted.

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<p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2 I can say that we've had documents produced to</p> <p>3 us off of servers in the UK, servers in New</p> <p>4 York, and then further complicated by vendors in</p> <p>5 New York, so I can never be sure if I'm looking</p> <p>6 at London or New York time on some of these</p> <p>7 things.</p> <p>8       A. It doesn't seem --</p> <p>9       MR. BERNICK: I think --</p> <p>10      A. Monday morning was -- Monday morning</p> <p>11 is the 22nd, is the date of closing, correct?</p> <p>12 So this would refer to that Sunday evening into</p> <p>13 the Monday morning.</p> <p>14      Q. I suspect --</p> <p>15      MR. BERNICK: Well, no, no. This is</p> <p>16 probably 10 o'clock --</p> <p>17      MR. GAFFEY: I think it's 10 o'clock</p> <p>18 London time.</p> <p>19      MR. BERNICK: -- London time.</p> <p>20      MR. GAFFEY: So you're 4 A.M. New</p> <p>21 York -- or, 5 A.M. New York.</p> <p>22      MR. BERNICK: 5 A.M. New York time,</p> <p>23 real early in New York.</p> <p>24      A. 10 A.M., that's right. That's 5 A.M.</p> <p>25 would be consistent. That's correct. Then</p>	<p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2 that's why it says 6 and 6:30.</p> <p>3      Q. And then the subsequent one is 5:22</p> <p>4 A.M. of your --</p> <p>5      A. I get it. I understand.</p> <p>6      Q. You mentioned before the choices that</p> <p>7 were given to JPM. Does this e-mail relate to</p> <p>8 that issue?</p> <p>9      A. Yes, it does.</p> <p>10     Q. And Mr. Ricci --</p> <p>11     MR. BERNICK: Actually, you say</p> <p>12 choices given to JPM. It says "we have a</p> <p>13 few choices."</p> <p>14     MR. GAFFEY: I'm about to follow up on</p> <p>15 that.</p> <p>16     Q. I just want to know if it relates to</p> <p>17 the topic that we were referring to, the choices</p> <p>18 that were given to JPM.</p> <p>19     A. The subject matter that's in this</p> <p>20 e-mail relates to the JPM problem and the list</p> <p>21 of securities that they gave us in the middle of</p> <p>22 the night and the path to a resolution which was</p> <p>23 then resolved in that phone call that we had</p> <p>24 with their people and their lawyer on the phone.</p> <p>25 That's what it relates to, to the best of my</p>
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<p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2 knowledge.</p> <p>3      To be clear, though, so you don't get</p> <p>4 mistaken, those three choices were not the same</p> <p>5 three choices that I indicated that were given.</p> <p>6      Q. No, I didn't understand your testimony</p> <p>7 that way. That may be my fault in the question.</p> <p>8 I was just sort of pointing to the topic as</p> <p>9 opposed to the particulars.</p> <p>10     A. I understand.</p> <p>11     Q. I'm showing you, Mr. Klein, what was</p> <p>12 previously marked as Deposition Exhibit 149A.</p> <p>13 Would you take a look through that, please.</p> <p>14     A. Yes.</p> <p>15     Q. Let me know when you've had a chance</p> <p>16 to review it.</p> <p>17     A. Yes.</p> <p>18     Q. Now, in the first e-mail sent here,</p> <p>19 it's from you to Mr. Diamond and begins, "The</p> <p>20 court has approved Barclays' acquisition of</p> <p>21 Lehman Brothers. Congratulations. A great leap</p> <p>22 forward for BarCap."</p> <p>23     Do you see that?</p> <p>24     A. Yes.</p> <p>25     Q. Do you recall sending this particular</p>	<p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2 e-mail to Mr. Diamond?</p> <p>3      A. Not this specific, not this specific</p> <p>4 e-mail.</p> <p>5      Q. Further up in the e-mail, Mr. Diamond</p> <p>6 responds to you, "Yes," exclamation point,</p> <p>7 exclamation point, exclamation point, and then</p> <p>8 you reply, "Bob, great day. We clawed back 3</p> <p>9 billion more of value in the transaction and cut</p> <p>10 the building prices by 160 million tonight."</p> <p>11     What are you referring to there?</p> <p>12     A. This was the Friday morning pain and</p> <p>13 suffering to get the transaction closed. Bob at</p> <p>14 this stage was not intimately involved in the</p> <p>15 day-to-day, or I certainly wasn't communicating</p> <p>16 with him, so I didn't see him in part and</p> <p>17 parcel. It was Rich who was the day-to-day</p> <p>18 contact, which was a shift from the sort of Fed</p> <p>19 weekend, and Rich was sort of intimately</p> <p>20 involved in the moving pieces. And the</p> <p>21 summation up top was meant to sum up all the</p> <p>22 events that had taken place that got us to get a</p> <p>23 closing. It was a hard -- it was a hard day.</p> <p>24     Q. Now, the reference to 160 million, is</p> <p>25 that a reference to the commission issue you</p>

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2 spoke about before?

3 A. It was the splitting the difference on  
4 the -- I believe, but I don't know this for  
5 certainty, that there were two opinions,  
6 valuation opinions, both put forward by Lehman.  
7 It may well have been that the appraisers had to  
8 be agreed to by Barclays. I don't know the  
9 specifics, but the two opinions were then split  
10 down the middle.

11 Those opinions resulted in a reduction  
12 in value of the two buildings of 160 million.  
13 In addition, I think there was a waiving of this  
14 brokerage commission, but I think this -- I  
15 believe that this 160 refers to the splitting of  
16 the difference. The above was meant to be of  
17 kind of a summation of -- well, just of the  
18 challenges of the day to get over the finish  
19 line.

20 Q. And the 3 billion that's referred to  
21 in that e-mail to is a reference to the  
22 additional assets searched for and found on  
23 Friday?

24 A. I would have to -- again, I don't  
25 recall the specific e-mail, but that which we

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2 found, the bag of hammers, 1.9, the 15c3, is  
3 entirely consistent with that.

4 Q. Does this refresh your recollection as  
5 to the amount that was added on?

6 A. I want to be clear. I don't believe  
7 anything was, quote, added on. I have said --

8 Q. Let me put a clearer question. You  
9 made that point before, and that's fair. Let me  
10 withdraw the question and rephrase it.

11 Does this refresh your recollection as  
12 to the additional value that was put in the deal  
13 on Friday?

14 MR. BERNICK: Go ahead.

15 A. You've used the term "value" a few  
16 times. I don't know what the value of, in  
17 particular, the bag of hammers, I don't know  
18 what the value of that was, but what I've said,  
19 there was the gap. We delivered the need to get  
20 more assets. This was a summation of what took  
21 place on the Friday.

22 Q. In your e-mail to Mr. Diamond you used  
23 the word "value" and you used it -- you say "3  
24 billion more of value." Was that your view of  
25 what the value was?

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2 A. I couldn't have a view specifically of  
3 the value because I don't have the -- I didn't  
4 have the analytics of the value and I never saw  
5 the 1.9. It was a reference made to us in terms  
6 of what the value was. The reference is when  
7 someone says you're getting 1.9 billion of  
8 securities, that it's 1.9 billion of securities.  
9 That's just not something that today or then I  
10 could independently verify.

11 (Discussion off the record.)

12 (Recess; Time Noted: 3:07 P.M.)

13 (Time Noted: 3:17 P.M.)

14 EXAMINATION BY

15 MR. TECCE:

16 Q. Good afternoon, Mr. Klein. My name is  
17 James Tecce. I am an attorney at Quinn Emanuel  
18 and we are counsel to the Creditors Committee.

19 Going to September 19, the day of the  
20 sale hearing, I believe when Mr. Gaffey was  
21 asking you questions earlier, you referred to a  
22 sidebar that took place during the sale hearing  
23 that you did not participate in, correct?

24 A. There was a reference -- are you  
25 referring to the e-mail discussion?

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2 Q. No, no, no, I'm referring to the sale  
3 hearing -- let me back up for a second. Did you  
4 participate in the sale hearing where the  
5 transaction was presented to the bankruptcy  
6 court for approval on the 19th of September?

7 A. I sat in and watched, yes.

8 Q. Okay. And did there come a point in  
9 time during the sale hearing where there was a  
10 sidebar discussion among Weil attorneys and  
11 creditor attorneys, as you understood?

12 A. I believe so.

13 Q. Okay.

14 A. I believe there was a sidebar amongst  
15 the Weil attorneys, other attorneys, and  
16 interested parties broadly as a -- I don't  
17 believe that it was restricted to attorneys. It  
18 was interested parties fully being briefed, as I  
19 understood it to be the case, but I don't know  
20 all the people that were in the room. But it  
21 was a fairly broad briefing on what had been the  
22 transaction.

23 Again, I don't know, just to respond  
24 to your comment about lawyers and lawyers, I  
25 think it was far broader than that.

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<p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2       Q.   Okay. And to be clear, you did not</p> <p>3 participate in that discussion, correct?</p> <p>4       A.   I don't believe I did.</p> <p>5       Q.   Okay. Did there come a point in time</p> <p>6 during the sale hearing that you participated in</p> <p>7 any discussions with the advisors to the</p> <p>8 Creditors Committee, their attorneys, their</p> <p>9 financial advisors?</p> <p>10      A.   Not during the sale hearing that I'm</p> <p>11 aware of.</p> <p>12      Q.   Okay.</p> <p>13      A.   Or that I can recall.</p> <p>14      Q.   Was there a point in time prior to the</p> <p>15 sale hearing that you participated in</p> <p>16 discussions with the committee? And just to be</p> <p>17 clear, when I say "the committee," I mean the</p> <p>18 committee or their advisors or their attorneys.</p> <p>19      MR. BERNICK: I don't know that you</p> <p>20 have established what the witness really</p> <p>21 knows about his knowledge of who is on the</p> <p>22 committee or who their lawyers are such that</p> <p>23 he could answer your question. I mean, if</p> <p>24 he knows who's on the committee, who the</p> <p>25 lawyers are, then he can answer the</p>	<p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2 question.</p> <p>3       MR. TECCE: I'm not asking who's on</p> <p>4 the committee. I'm asking if he ever had a</p> <p>5 conversation with their advisors.</p> <p>6       MR. BERNICK: But if he doesn't know</p> <p>7 who their advisors are or he doesn't know</p> <p>8 whose on the committee, he can't answer the</p> <p>9 question. I'm not saying -- he may well</p> <p>10 know.</p> <p>11      MR. STERN: James, in other words, he</p> <p>12 may have spoken to someone at Houlihan, but</p> <p>13 he may not have known that the person was</p> <p>14 from Houlihan.</p> <p>15      MR. BERNICK: Or that Houlihan was</p> <p>16 professionals for somebody.</p> <p>17      Q.   Do you have an understanding of who</p> <p>18 the attorneys for the Creditors Committee were?</p> <p>19      A.   I met you today. I don't -- I don't</p> <p>20 know who was representing -- I don't know that</p> <p>21 there was only one creditor committee or if</p> <p>22 there was more. I don't know all the background</p> <p>23 on the Creditors Committee and who was involved.</p> <p>24      Q.   Okay. Did you have an understanding</p> <p>25 that Houlihan Lokey was the financial advisor to</p>
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<p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2 the Creditors Committee?</p> <p>3       A.   I have subsequently learned that</p> <p>4 official capacity. I don't know that I knew</p> <p>5 specifically that they had that role at the</p> <p>6 time, but I have subsequently learned that.</p> <p>7       Q.   Okay. And did you know that Milbank</p> <p>8 Tweed was counsel to the Creditors Committee?</p> <p>9       A.   I don't have a recollection of</p> <p>10 specifically of Milbank Tweed. I don't.</p> <p>11      Q.   So, prior to the sale hearing taking</p> <p>12 place, did you engage in any conversations or</p> <p>13 discussions with Houlihan Lokey or Milbank Tweed</p> <p>14 concerning the sale transaction?</p> <p>15      A.   I can -- to be very precise, there was</p> <p>16 a series of events at the Weil Gotshal firm</p> <p>17 where there were a series of meetings in meeting</p> <p>18 rooms. I don't recall the specific dates of</p> <p>19 those meetings or meeting rooms, but there was</p> <p>20 one evening in which there was a creditors</p> <p>21 committee of some form meeting. I don't</p> <p>22 specifically know what was transpiring.</p> <p>23      I did get pulled into a side room by a</p> <p>24 group of people that included some of the Weil</p> <p>25 lawyers, and again, I don't recall specifically</p>	<p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2 which date in the chronology it was, but it was</p> <p>3 described to me that could I explain some</p> <p>4 elements of the transaction, and the creditors</p> <p>5 were involved. There was a guy with glasses. I</p> <p>6 don't -- I don't know what his specific name</p> <p>7 was.</p> <p>8      And I remember specifically that</p> <p>9 meeting only because I drew on a manila folder</p> <p>10 such as that with a green marker the components</p> <p>11 of both this 45 and the assets that were then</p> <p>12 collateralized against it, separately and</p> <p>13 distinctly, the other, quote, moving pieces in</p> <p>14 what I understood to be the fund flows.</p> <p>15      It was not a very long conversation</p> <p>16 and I can't tell you who other than I think</p> <p>17 Harvey Miller was in because I got grabbed in</p> <p>18 there, but I specifically went through, again,</p> <p>19 only because I grabbed a manila thing and there</p> <p>20 was a green pen and I just have that particular</p> <p>21 recollection of drawing boxes.</p> <p>22      And I did it because the Weil firm</p> <p>23 asked me to, and as I understood it, there was</p> <p>24 some form of ongoing creditor committee meeting</p> <p>25 that I wasn't a party to. That's my only</p>



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recollection.

Q. Okay. And did this take place before or after the sale hearing?

A. I don't have a recollection of what -- I just don't have a recollection of the -- it was at Weil, but I don't know -- I don't have a recollection.

Q. Is there any reason --

A. And by the way, I know which conference room it was at Weil because we had moved from the corner conference room to the one next to it because I was grabbed, and there was the middle conference room near the entryway was where the Creditors Committee was meeting. So I sort of know -- I have a picture of the whereabouts, I just don't remember the day.

Q. Do you have any reason to believe that it took place prior to the sale hearing Friday hearing?

A. Again, I don't have a recollection of which -- I don't have a recollection of which day it happened. I know specifically what I drew and that I was asked to have this discussion and that it related to the Creditors

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Committee and the fact that they were meeting.

Beyond those facts, as to which date and who the people were, because I don't -- I don't think they introduced themselves to me, I'm fairly certain they didn't introduce themselves to me, I don't have more of a recollection than that.

Q. Okay. And so let's just back up for a second. I believe that you referenced a larger meeting and then you were pulled into a side room; is that correct?

A. That's right.

Q. And so let's start with the larger meeting. Did you -- what was your understanding of what the larger meeting -- of who was in attendance at the larger meeting?

A. Something to do with the creditors. I don't have more detail on it than that because I didn't know the people. There was just a big room that supposedly there was the creditors meeting and a phone call. I was asked to be pulled into this other side room --

Q. Okay.

A. -- and I acquiesced.

Q. Okay. The larger meeting, did you

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speaking with anyone or --

A. I wasn't in that larger meeting.

Q. I believe you mentioned Mr. Miller in the side meeting. Do you remember anyone else who attended that meeting, the names of anyone else?

A. It was -- there were people floating around, you know, from Barclays and from Cleary Gottlieb and people floating around from the Weil firm as well. I just don't know -- people were coming in and out of some of those rooms, so I just don't know. I just remember Harvey asked me to explain it, so that's the only reason why I know Harvey was there.

Q. Do you know why he asked you to explain it? Do you have an understanding of why he asked you to explain it?

A. No, he just asked me to -- no, I don't. He just asked me to.

Q. Do you remember the sum and substance -- well, actually, how long did this sidebar, side room meeting last, do you remember?

A. I don't. I don't. I don't think it

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was exceptionally long, but it was long enough for me to draw just a box diagram of the flow of funds on a manila folder and answer one or two questions. I don't want to speculate how long it was. I don't think it was an enormously long meeting.

Q. Do you remember the substance of what was discussed with respect to, you know, the folder?

A. It was the principal elements were the 45 loan, the assets that were roughly viewed as equivalent to that, the, if you will, bag of hammers and -- I'm sorry, let me be more precise.

I recall specifically the funds flows being discussed and the critical element of that discussion being the 45. Beyond that, I don't know specifically which boxes or otherwise I drew, so I don't want to -- I don't want to go through over-detail because I would be then speculating on the remaining details.

Q. Do you recall whether the liabilities that were being assumed by Barclays was discussed during the meeting?



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<p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2   and I indicated that I don't have the authority</p> <p>3   to do anything like that, and then I think</p> <p>4   Archie Cox was the individual that was there</p> <p>5   because he was the presiding, if you will,</p> <p>6   officer.</p> <p>7           It could well have been that the</p> <p>8   agreement was other people, because there were</p> <p>9   other senior people like Jonathan Hughes around.</p> <p>10   But as I understood it, that was agreed to, that</p> <p>11   above and beyond that, some minimum number, it</p> <p>12   could in fact go back to the estate. That was</p> <p>13   very late in the process. I don't remember</p> <p>14   specifically when, but it was very late in the</p> <p>15   process.</p> <p>16   Q.   And do you have a recollection, Mr.</p> <p>17   Klein, of where you were when this discussion</p> <p>18   with Mr. Cox and Mr. Miller took place?</p> <p>19   A.   You know, I want to say again, you</p> <p>20   have now done this twice to me. I have not said</p> <p>21   that there was a conversation between Mr. Cox</p> <p>22   and Mr. Miller.</p> <p>23   Q.   I'm sorry. I did not mean to</p> <p>24   represent your prior testimony. I think I must</p> <p>25   have misunderstood your answer.</p>	<p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2   A.   I believe, but I don't know for sure,</p> <p>3   that the request from Mr. Miller came somewhere</p> <p>4   at the Weil offices, but I don't -- I don't have</p> <p>5   a specific recollection, and I just want to be</p> <p>6   clear that was a request to me that I then</p> <p>7   passed on to the people at Barclays because it</p> <p>8   was their decision.</p> <p>9   Q.   And you say late in the process, so</p> <p>10   can we at least narrow it down to a date? Was</p> <p>11   that request of Mr. Miller to you, was that on</p> <p>12   the Sunday, the 21st?</p> <p>13   A.   My apologies. I don't know the date.</p> <p>14   I don't -- I don't know the date.</p> <p>15   Q.   Was it sometime prior to the closing</p> <p>16   of the deal on Monday morning?</p> <p>17   A.   Oh, it certainly was prior to the</p> <p>18   closing. I don't -- I'm not aware of -- it</p> <p>19   certainly was prior to the closing.</p> <p>20   Q.   And just to bookend it, can we agree</p> <p>21   that that conversation took place sometime</p> <p>22   between the bankruptcy court hearing on the 19th</p> <p>23   and the closing on the 22nd, is that fair?</p> <p>24   A.   I don't, I don't, I really don't. As</p> <p>25   I think I've said, the -- I don't think the 15c3</p>
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<p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2   assets came into play until sometime when this</p> <p>3   issue of the broader set of asset problems after</p> <p>4   Tuesday occurred, so it's clearly after that,</p> <p>5   and it's clearly before closing, but I just -- I</p> <p>6   just don't know the specific date. And I would</p> <p>7   help you if I could remember, but I don't.</p> <p>8   Q.   I understand, sir. Forgive me if I'm</p> <p>9   getting a little repetitive, can you be as</p> <p>10   precise as possible about the terms of the</p> <p>11   request from Mr. Miller to you?</p> <p>12   A.   I've given you what I know. I</p> <p>13   don't -- I don't have a recollection above and</p> <p>14   beyond that.</p> <p>15   Q.   And just so I understand your</p> <p>16   testimony, sir, Mr. Miller asked you whether</p> <p>17   Barclays would agree that if there was more than</p> <p>18   a certain figure, perhaps around \$750 million,</p> <p>19   available under c3, then that would be returned</p> <p>20   to the LBI estate; is that accurate?</p> <p>21   A.   You are using very precise terms and I</p> <p>22   want to be very careful because (A) this was a</p> <p>23   year ago or more -- a year ago, and there was a</p> <p>24   lot of moving pieces. I don't specifically know</p> <p>25   who was involved in the conversation other than</p>	<p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2   Harvey Miller.</p> <p>3           I only know that it was a request</p> <p>4   that, above and beyond what had been represented</p> <p>5   as being assets that were certainly going to go,</p> <p>6   which was this e-mail, if there were more, could</p> <p>7   those come back to the estate, and I said it's</p> <p>8   not -- that's not something that can be done.</p> <p>9           Now, I don't know -- not something I</p> <p>10   can do. I don't know who else was in the room.</p> <p>11   It would be -- there was virtually no situation</p> <p>12   that I can recall, in fact, I can't recall any</p> <p>13   situation that I was in a room alone with Harvey</p> <p>14   Miller. So it would have been as part of some</p> <p>15   other grouping. And then a response was given,</p> <p>16   to my understanding, from Barclays back that</p> <p>17   that would be okay. But I don't -- I don't have</p> <p>18   a recollection beyond what I've just told you.</p> <p>19   Q.   Did you have an understanding, Mr.</p> <p>20   Klein, that the transfer of these moneys from</p> <p>21   Lehman to Barclays, the 15c3 assets, was</p> <p>22   conditional upon there being an excess beyond</p> <p>23   the regulatory requirement?</p> <p>24   MR. BERNICK: Object to the form. I'm</p> <p>25   not objecting. I think the form of your</p>

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<p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2           question, though, is ambiguous.</p> <p>3           The witness has now been over this</p> <p>4           like four or five different times, and I'm</p> <p>5           becoming a little concerned that there's</p> <p>6           something that's turning on a nuance here</p> <p>7           that's just not known by the witness.</p> <p>8           A. I've testified to what I know.</p> <p>9           Someone handed an e-mail that said this would be</p> <p>10          available to you. It was an important part of</p> <p>11          the decision process in that last Friday. It's</p> <p>12          not a subject I knew a lot about before and it's</p> <p>13          not a subject I know a lot about now.</p> <p>14          Q. And the e-mail was, to your</p> <p>15          understanding, an e-mail from some individual at</p> <p>16          the S.E.C.; is that correct?</p> <p>17          A. There was an e-mail that referenced</p> <p>18          that there was an approval to release a certain</p> <p>19          amount of these funds, and as part of that, the</p> <p>20          Lehman team said this is an asset for you to</p> <p>21          solve what was the discussion that Mr. Gaffey</p> <p>22          and I had about the asset issue, and the</p> <p>23          reference made, as I've said that I can recall,</p> <p>24          all I can recall is that it was up to 2 billion,</p> <p>25          but that this note said it was at least 750 that</p>	<p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2           could be released.</p> <p>3           I don't recall any more, but I'm</p> <p>4           assuming that that e-mail -- that was an e-mail,</p> <p>5           so you all have a lot of documents.</p> <p>6           Q. We have many e-mails, Mr. Klein, you</p> <p>7           are right.</p> <p>8           Do you know, Mr. Klein, whether the</p> <p>9           e-mail about which you have testified -- I</p> <p>10          understand that this was a year ago and your</p> <p>11          recollection on this issue is one year old and</p> <p>12          perhaps not any longer precise, do you recall</p> <p>13          whether that was an e-mail from someone at the</p> <p>14          S.E.C. or was it an e-mail that simply</p> <p>15          referenced the S.E.C.'s supposed approval of</p> <p>16          this element of the deal, or do you not know</p> <p>17          either way?</p> <p>18          MR. BERNICK: You may want to ask him</p> <p>19          if he ever saw it. I don't know, but no one</p> <p>20          has established whether he saw it.</p> <p>21          MR. OXFORD: I think he testified that</p> <p>22          he hadn't seen it subsequently, from which I</p> <p>23          inferred that he had seen it earlier.</p> <p>24          A. There was -- the only reason I recall</p> <p>25          the e-mail was it was rare that there was</p>
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<p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2           specific things shown to me that said here's an</p> <p>3           asset, and because of that event on Friday,</p> <p>4           there was this new subject that came up --</p> <p>5           whether it was Thursday or Friday, I don't know</p> <p>6           when, but this new subject of this 15c3.</p> <p>7           I didn't know what it was, it was</p> <p>8           referred to as an available set of assets, and</p> <p>9           that was then promptly handed to the lawyers</p> <p>10          because it was not a subject matter that I</p> <p>11          could, and then some determination had to be</p> <p>12          made was, is that relevant to then consider it</p> <p>13          as part of this asset pool, and the decision was</p> <p>14          yes. Who the e-mail was from and between I</p> <p>15          don't -- I don't have a recollection.</p> <p>16          Q. I think last question on this, and I</p> <p>17          hope last question overall: You described</p> <p>18          earlier a give-back on the 15c3. Do you have an</p> <p>19          understanding of the reasons, if any, for the</p> <p>20          give-back on 15c3, sir?</p> <p>21          A. I don't. I just recall a request</p> <p>22          coming in. I don't know why.</p> <p>23          MR. OXFORD: Okay. Mr. Klein, thank</p> <p>24          you for your time. I don't have any further</p> <p>25          questions for you at this time.</p>	<p>1           HIGHLY CONFIDENTIAL - M. KLEIN</p> <p>2           MR. GAFFEY: Just before we close the</p> <p>3           record, I don't know, Mr. Klein --</p> <p>4           We can go off the record.</p> <p>5           (Discussion off the record.)</p> <p>6           MR. BERNICK: At the outset of the</p> <p>7           deposition, there was a dialogue between Mr.</p> <p>8           Gaffey and I regarding production pursuant</p> <p>9           to the Subpoena that's been served on Mr.</p> <p>10          Klein through me of what I will call for</p> <p>11          short form the engagement letter between Mr.</p> <p>12          Klein and Barclays relating to this matter,</p> <p>13          and I undertook at that time to see if we</p> <p>14          could even get a hold of it during the</p> <p>15          course of the day, didn't have time to do so</p> <p>16          because we've been working so hard and</p> <p>17          intensely with these concise and insightful</p> <p>18          questions that I didn't get a time to break.</p> <p>19          So I will in fact get a copy of that.</p> <p>20          I will in fact make it available in this</p> <p>21          case pursuant to the subpoena. However, my</p> <p>22          current intent on behalf of Mr. Klein is to</p> <p>23          redact the reference to a dollar amount, and</p> <p>24          we can have further discussion about that,</p> <p>25          but I will in fact discharge Mr. Klein's</p>

1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE SOUTHERN DISTRICT OF NEW YORK  
3  
4

In re: )  
5 ) Chapter 11  
LEHMAN BROTHERS ) Case No. 08-13555(JMP)  
6 HOLDINGS, INC., et al, ) (Jointly Administered)  
 )  
7 Debtors. )  
----- )  
8  
9  
10  
11

12 30(b)(6) DEPOSITION OF  
13 CLEARY GOTTlieb STEEN & HAMILTON LLP  
14 by  
15 VICTOR I. LEWKOW  
16 New York, New York  
17 Wednesday, February 10, 2010  
18  
19  
20  
21  
22

23 Reported by:  
24 MAYLEEN CINTRON, RMR, CRR  
25 JOB NO. 28226

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<p>1 -Lewkow-</p> <p>2 seller. There was a -- there was a provision</p> <p>3 that said that on a certain pool of positions,</p> <p>4 that we would be -- that Barclays would be</p> <p>5 acquiring at the closing, that if, as I</p> <p>6 recall -- and you know, without having the</p> <p>7 Agreement in front of me to look at the words,</p> <p>8 I always defer to what's in the contract.</p> <p>9 But my recollection is that the --</p> <p>10 there was a provision that if within some</p> <p>11 period, I think it was a year, to the extent</p> <p>12 that Barclays actually sold positions -- not</p> <p>13 what their value was on a given date or the</p> <p>14 like, not as audit, not if they held</p> <p>15 positions, even if those positions increased</p> <p>16 enormously in value or if they went down in</p> <p>17 value.</p> <p>18 But if with respect to some pool --</p> <p>19 and I don't remember the details of how it</p> <p>20 worked because that provision was later</p> <p>21 dropped, as you know. There was a provision</p> <p>22 that if -- with respect to some of those</p> <p>23 assets, if we -- if Barclays sold them during,</p> <p>24 I think, the first year, there would be some</p> <p>25 sharing of the -- of the profit compared to</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 what -- I forget what the base was exactly, as</p> <p>3 to what date the assumed valuation was.</p> <p>4 So there was a provision for</p> <p>5 additional consideration potentially to flow</p> <p>6 to the seller.</p> <p>7 <b>Q. I'll show you the Asset Purchase</b></p> <p>8 <b>Agreement in a minute and we'll spend some</b></p> <p>9 <b>time with it today.</b></p> <p>10 <b>But is the provision that you</b></p> <p>11 <b>described, is that fairly described as a</b></p> <p>12 <b>post-closing purchase price adjustment</b></p> <p>13 <b>provision?</b></p> <p>14 MR. MORAG: Objection. Asked and</p> <p>15 answered.</p> <p>16 A. Yeah, I have nothing more to say</p> <p>17 other than what I said on that subject.</p> <p>18 <b>Q. I'm not sure I have an answer to</b></p> <p>19 <b>the question as to whether it is -- the</b></p> <p>20 <b>provision you described is what you would</b></p> <p>21 <b>describe, and I'm referring to Paragraph 4 of</b></p> <p>22 <b>your affidavit, as a "post-closing purchase</b></p> <p>23 <b>price adjustment provision"?</b></p> <p>24 A. Well, with due respect, if you read</p> <p>25 my declaration, it says, "...a pre-closing</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 -Lewkow-</p> <p>2 and/or post-closing purchase price adjustment</p> <p>3 provision relating to the valuation of the</p> <p>4 transferred assets and liabilities". This was</p> <p>5 not such a provision.</p> <p>6 <b>Q. So to qualify as a balance sheet</b></p> <p>7 <b>transaction, in your view, the pre or post</b></p> <p>8 <b>closing purchase price adjustment provision</b></p> <p>9 <b>would have to relate to a valuation of the</b></p> <p>10 <b>assets and liabilities? It's that last piece,</b></p> <p>11 <b>"valuation of the assets and liabilities" that</b></p> <p>12 <b>defines it as a purchase price adjustment</b></p> <p>13 <b>provision as you meant it in your Declaration?</b></p> <p>14 MR. MORAG: Object to form.</p> <p>15 A. As I said earlier, to me a balance</p> <p>16 sheet transaction is when you later prepare --</p> <p>17 I'm not sure that the word -- I would say do a</p> <p>18 valuation from an accounting standpoint. As a</p> <p>19 balance sheet, normally you would prepare a</p> <p>20 balance sheet based on generally accepted</p> <p>21 accounting principles, have it audited and</p> <p>22 adjust the purchase price based on that.</p> <p>23 <b>Q. Is there a reason such a mechanism</b></p> <p>24 <b>was not included in the transaction at issue</b></p> <p>25 <b>here?</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 A. You know, I would -- I don't recall</p> <p>3 whether at any point in time, whether Lehman</p> <p>4 or its advisors requested such a provision. I</p> <p>5 just don't recall. Certainly if they did, it</p> <p>6 came and went very quickly in the discussions</p> <p>7 of the concept of the Asset Purchase</p> <p>8 Agreement. But I don't recall there ever</p> <p>9 being such a provision.</p> <p>10 I would note that we were -- as</p> <p>11 everybody knew then and knows now, it was an</p> <p>12 incredibly volatile couple of days. The Asset</p> <p>13 Purchase Agreement was being negotiated on</p> <p>14 that Monday and Tuesday after Lehman had filed</p> <p>15 for Chapter 11 late Sunday night, early Monday</p> <p>16 morning.</p> <p>17 And I think the idea that anyone</p> <p>18 had a wonderfully exact knowledge as to what</p> <p>19 the value of portfolio assets in particular</p> <p>20 were at that point in time, it would be</p> <p>21 amazing because there was a very uncertain</p> <p>22 value at that point in time.</p> <p>23 <b>Q. Did Cleary Gottlieb play any role</b></p> <p>24 <b>in the negotiation of the transaction with</b></p> <p>25 <b>regard to arriving at a valuation of the</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>

1 -Lewkow-

2 assets to be transferred?

3 MR. MORAG: Object to the form.

4 Vague.

5 A. No.

6 Q. Were there negotiations between the  
7 parties concerning the value of the assets to  
8 be transferred?

9 A. As described in my declaration,  
10 there were discussions, I would not -- I don't  
11 believe there was a negotiation, as I heard it  
12 described. And I want to stay away from  
13 privileged communications, although I'm not  
14 sure I have any in particular in mind now.  
15 But obviously, I assume none of -- you're not  
16 asking me at any point -- if you are, I assume  
17 I'll be telling you not, that I won't, or one  
18 of the lawyers here will tell me not to.

19 But it was my understanding that  
20 Lehman -- that Barclays -- let me step back a  
21 second.

22 Even before the bankruptcy, even  
23 before that Friday morning when -- the Friday  
24 before the 15th, the 12th I guess when  
25 Barclays had first retained us certainly, they

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2 may have gotten involved a little bit the day  
3 before or something. But even before Barclays  
4 had started thinking about, as far as I know,  
5 Lehman, there had been stories in the press  
6 about suggesting that Lehman had been slow to  
7 revalue assets, and that they had inflated  
8 values in their portfolio.

9 But beyond that in the very limited  
10 time, as I understood it, that Barclays had  
11 been provided with some information about the  
12 portfolio that we were -- that Barclays was  
13 being asked to -- that it be acquiring as part  
14 of its acquisition of basically the entire  
15 business with certain exceptions and the  
16 assumption of very substantial certain  
17 specified liabilities, when their people,  
18 financial people, trading people, whoever it  
19 was -- and I'm not sure I knew all the people  
20 involved. It was a new client in the  
21 United -- I don't know the name of all the  
22 people who were going -- who were around and  
23 in the different rooms that we were -- that  
24 meetings were taking place on that Monday and  
25 Tuesday up at Lehman Brothers on the -- on the

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2 big conference and dining floor.

3 But it was my understanding that  
4 Barclays people had reviewed certain  
5 information about the assets and liabilities  
6 and had thought that the -- there were  
7 large -- certain category types of assets and  
8 the like that had, as last marked by Lehman,  
9 were substantially overstated. Whether they  
10 had been overstated as of the date they  
11 originally been marked or were overstated  
12 because of the passage of a couple of days, I  
13 believe they would not have been marked for a  
14 couple of days. It's my recollection. I  
15 could be wrong on that.

16 But one way or another, or a  
17 combination of the two, that the Barclays  
18 people had concluded that the Lehman marks  
19 were substantially overstated.

20 Q. When was Cleary first retained in  
21 connection with this transaction?

22 A. We were retained on Friday. Not on  
23 this transaction, we were retained on the  
24 Friday before the bankruptcy on the 12th,  
25 early that morning, to assist Barclays in

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1 -Lewkow-

2 looking at a potential much larger transaction  
3 to buy not just a substantial part of the U.S.  
4 and Canadian broker-dealer investment banking  
5 business, but a much larger portion of Lehman  
6 Brothers.

7 I don't know whether initially -- I  
8 can't recall whether initially it might have  
9 been all of Lehman. I think very early it  
10 became clear it was not quite everything but  
11 it was a larger universe than what we ended up  
12 trying to do in doing, starting with the  
13 Monday filing the Chapter 11.

14 Q. In the interest of everyone's time,  
15 we've taken a lot of depositions in this case.  
16 Some time over the weekend, the concept of  
17 that larger transaction came to an end, those  
18 negotiations?

19 A. Correct. Sunday around midday.

20 Q. And around some point, negotiations  
21 resumed with respect of the smaller  
22 transaction that was ultimately concluded,  
23 correct?

24 A. I don't know if it matters. But I  
25 would use the word "resume."

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**Q. Okay.**

A. As far as I can tell, they stopped on Sunday, people went home and saw their families. And I got a call Monday morning, "Well, can you come up to Lehman Brothers? We're going to see if we can do a deal. If they did file as they said they would" -- we thought they would -- "they filed in Chapter 11 and now want to see whether or not there's something we can do to purchase" -- you know, I don't remember how it was described to me in that initial call.

But, "Can you come up to Lehman Brothers?"

MR. MORAG: Mr. Lewkow, let me caution you on privilege. I think you just said the gist to the conversation, which is sufficient for these purposes.

**Q. You came back?**

A. I went up to Lehman Brothers.

**Q. Let's just talk about the period when you came back. In the negotiations that began then, what steps, if any, were taken to accommodate Barclays' view that the Lehman**

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**marks were substantially overstated, to use your term?**

MR. MORAG: Objection. Vague.

A. Yeah. I guess -- I don't know what you mean by "accommodate." And the word -- you also used the word "the view." I think that view -- I did mention the newspaper.

MR. MORAG: I think we need a break.

(Whereupon, a recess was taken from 10:22 a.m. to 10:25 a.m.)

BY MR. GAFFEY:

**Q. In the negotiations that took place in connection with the transaction that's brought us here today, Mr. Lewkow, were there discussions, to your knowledge, between the folks at Barclays and the folks at Lehman about Barclays' view that the assets of Lehman were overstated on its books?**

MR. MORAG: Object to the form.

A. Yes. As to certain assets.

**Q. Can you tell me what you know with regard to those discussions?**

A. As I stated in my declaration,

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Barclays, was my understanding, that Barclays' trading and/or financial folks had been provided certain information about the trading positions; that it was contemplated that Barclays would assume as part of an acquisition of the business of substantially all of the business.

And in the course of that, Barclays had -- Barclays people had reached the view that there were very significant -- that the aggregate carrying value that they had been furnished by Lehman was substantially higher than Barclays believed was appropriate that Monday or Tuesday.

**Q. And by "aggregate carrying value", do you mean Lehman's book value?**

A. It's my -- I'm not an accountant, as you know. I'm a lawyer. It is my understanding that for an entity such as Lehman, they are supposed to -- under regulatory accounting principles, maybe generally accepted accounting principles, I don't know. But as a general matter, broker-dealers mark their portfolio to market

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on a daily basis. And I believe that means their book value is effectively adjusted each day. To the extent that a balance sheet is prepared, the balance sheet is prepared based on those marks.

**Q. So when you use the phrase "aggregate carrying value," were you referring to Lehman's books marked to market in that manner?**

MR. MORAG: Object to the form.

MR. HUME: Objection, asked and answered.

A. I think I've got nothing more to say on that.

**Q. What did you mean to say when you said "aggregate carrying value"?**

A. The value -- what I hear people refer to as "the marks." What they were being marked at on the books of Lehman by Lehman.

**Q. And in the negotiations of the transaction, were any steps taken to address Barclays' concern that the aggregate carrying value was substantially higher than it should have been?**

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MR. HUME: Objection. Vague.

MR. MORAG: Objection. Asked and answered.

A. I have -- I've told you -- I have nothing to add to my answer.

**Q. Well, I'm afraid that's not going to work, so I do need an answer to the question.**

A. Your question asked in the negotiations. I don't -- I don't -- if you mean in the negotiations of the transaction, I think my answer would be no, as I have said in my declaration and in my statement.

Barclays was furnished information which led it to believe that Lehman's marks were not correct and overstated the value of assets, and was -- Barclays was not prepared to do a deal with -- where they were overstated marks on the Lehman books of large amounts.

**Q. So if Barclays was not prepared to do a deal where there were overstatements on Lehman's books of large amounts, what did Barclays do to address that concern in order**

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**to conclude a transaction?**

A. Barclays made -- made its position -- made its view of the marks, that they were overstated substantially, clear to Lehman people and urged -- my understanding, they urged Lehman to take a fresh look at the values that they were carrying them on on their books because it was at a crazy world, and it was something that Lehman should take a fresh look at to -- to both deal with the passage of time and information.

I don't know what -- you know, in my declaration, I mention an example that was mentioned in a broad public -- "public" is the wrong statement. With both sides present, including lawyers, including me -- of the example of a particular position where Barclays had a junior position of -- junior tranche position from the same issuer, same type of security, and was carrying it --

I'm sorry. Barclays had a senior position and was carrying it at a bigger discount to par than Lehman was carrying the junior position. And those are -- you know,

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I'm sure there were other examples. That was the one that was easy to explain to us lawyers as evidencing why Barclays believed Lehman needed to take a fresh look at what it -- how it was carrying certain portions of the portfolio on its books and whether or not they needed to revise their marks.

**Q. Did the level at which Lehman was carrying its assets on the books affect the price which Barclays was willing to pay on the transaction?**

MR. MORAG: Object to form.

A. I think it affected their willingness to do the deal. The price was what was in the Agreement where we acquired certain assets, acquired certain liabilities, agreed to make certain payments, assumed a certain level of obligations.

We were buying a business as a whole; the purchase price was the whole transaction. We were not -- no one from Barclays went into this to buy a portfolio; it was to buy substantially all the assets of a business.

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**Q. Describe for me, if you would, the price that Barclays paid in that purchase.**

A. At what time, sir?

**Q. Good point. Describe for me the price that Barclays agreed to pay for that business on September 16, 2008?**

MR. HUME: I'm going to just object to the extent that it calls for interpretation of the contract which he hasn't been shown.

(Discussion off the record.)

**Q. I think the question on the table, Mr. Lewkow, is: Will you describe for me the price that Barclays agreed to pay for that business on September 16, 2008?**

MR. MORAG: Objection. To the extent it calls for a legal interpretation of the contract. If you recall generally the terms.

A. Look, I think the contract is the contract. Without having it in front of me, I may omit certain things. But in general terms, my recollection is that under the Asset Purchase Agreement as signed late on the 16th

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<p>1 -Lewkow-</p> <p>2 MR. MORAG: Objection to form.</p> <p>3 MR. HUME: Objection. Vague.</p> <p>4 A. As I mentioned, there is a</p> <p>5 provision in the compensation section that</p> <p>6 refers to this piece of paper or some version</p> <p>7 of it, yes.</p> <p>8 <b>Q. Was it your understanding that the</b></p> <p>9 <b>one-page piece of paper Mr. Berkenfeld signed</b></p> <p>10 <b>also guided the transaction to the extent the</b></p> <p>11 <b>value of portfolio of assets was concerned?</b></p> <p>12 MR. MORAG: Mr. Gaffey, I'm going</p> <p>13 to object. You keep using the word</p> <p>14 "signed," he keeps using the word</p> <p>15 "initialled."</p> <p>16 MR. GAFFEY: We are big boys. We</p> <p>17 both know it means he wrote on the</p> <p>18 document. Do you want me to say</p> <p>19 "initialled"?</p> <p>20 MR. MORAG: If you could.</p> <p>21 MR. GAFFEY: Sure. Can you read</p> <p>22 the question back?</p> <p>23 (Record read as follows:</p> <p>24 "Question: Was it your understanding</p> <p>25 that the one-page piece of paper</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 Mr. Berkenfeld signed also guided the</p> <p>3 transaction to the extent the value of</p> <p>4 portfolio of assets was concerned?"</p> <p>5 <b>Q. Can you answer that question as if</b></p> <p>6 <b>I said "initialled"?</b></p> <p>7 A. I need to hear it again. I'm</p> <p>8 sorry.</p> <p>9 <b>Q. Let me rephrase it.</b></p> <p>10 <b>The one-page piece of paper that</b></p> <p>11 <b>Mr. Berkenfeld initialled, what role, if any,</b></p> <p>12 <b>did that play in the transaction? Withdrawn.</b></p> <p>13 <b>Did the one-page piece of paper</b></p> <p>14 <b>that Mr. Berkenfeld initialled guide the</b></p> <p>15 <b>transaction with regard to the value of the</b></p> <p>16 <b>portfolio of assets transferred?</b></p> <p>17 MR. MORAG: Object to the form.</p> <p>18 A. I would not -- I don't know what</p> <p>19 you mean by "guide."</p> <p>20 <b>Q. Was it meant to instruct the drafts</b></p> <p>21 <b>people of the Asset Purchase Agreement as to</b></p> <p>22 <b>the value of the long position that was</b></p> <p>23 <b>transferred?</b></p> <p>24 A. The drafts people had already</p> <p>25 drafted the Agreement. I don't remember</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 -Lewkow-</p> <p>2 exactly what the status was at the precise</p> <p>3 time. This was brought in. I don't think it</p> <p>4 influenced the drafting. If by the draftsmen</p> <p>5 you mean the lawyers from both sides who were</p> <p>6 involved in preparation of the document, the</p> <p>7 Asset Purchase Agreement, I don't believe this</p> <p>8 guided the drafting of the Agreement, no.</p> <p>9 <b>Q. Did anyone from Cleary Gottlieb</b></p> <p>10 <b>play any role in the preparation of this</b></p> <p>11 <b>document?</b></p> <p>12 A. No. To the best of my knowledge,</p> <p>13 no.</p> <p>14 <b>Q. Did anyone from Cleary Gottlieb</b></p> <p>15 <b>play any role in determining the values that</b></p> <p>16 <b>are shown on this document?</b></p> <p>17 A. No.</p> <p>18 <b>Q. Did anyone from Barclays</b></p> <p>19 <b>participate in the preparation of this</b></p> <p>20 <b>document?</b></p> <p>21 A. I don't believe, not to my</p> <p>22 knowledge.</p> <p>23 <b>Q. Did anyone from Barclays play any</b></p> <p>24 <b>role in determining the values shown on this</b></p> <p>25 <b>document?</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 A. I don't -- I don't know what that</p> <p>3 means. Other than as I testified previously</p> <p>4 and is set forth in my declaration, you can</p> <p>5 characterize that in any way you want. But</p> <p>6 other than that, I don't know of anything</p> <p>7 relative to the question.</p> <p>8 <b>Q. Would you take a look at</b></p> <p>9 <b>Paragraph 9 of your Declaration?</b></p> <p>10 A. Sure.</p> <p>11 <b>Q. Take the time you need to review</b></p> <p>12 <b>the paragraph to refresh yourself of its</b></p> <p>13 <b>contents.</b></p> <p>14 <b>But my question is going to go to</b></p> <p>15 <b>the portion that begins -- seven lines down --</b></p> <p>16 <b>"While I was not present for the actual</b></p> <p>17 <b>discussions between Barclays and Lehman</b></p> <p>18 <b>Brothers traders..."</b></p> <p>19 A. Let me just reread it.</p> <p>20 <b>Q. Sure.</b></p> <p>21 <b>(Witness reviewing document.)</b></p> <p>22 A. Yes?</p> <p>23 <b>Q. Now, to your knowledge, was the</b></p> <p>24 <b>document I have before you marked as</b></p> <p>25 <b>Exhibit 19, a product of the discussions</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>

**-Lewkow-**

**between Barclays and Lehman traders that you're referring to in Paragraph 9 of your Declaration?**

MR. MORAG: Object to the form.

A. No. I -- I wouldn't -- I mean, I -- this was a Lehman Brothers document. I assume that as --

To the extent that Lehman Brothers, having listened to Barclays' views as to valuation may have changed their marks, as I believe they did, it may have reflected those judgments by Lehman as to the proper marking of assets or liabilities. But that's all.

**Q. Did you come to an understanding that Lehman changed its marks in response to Barclays' expression of concern that they were too high?**

A. It was my understanding that they had determined that they would change their marks.

MR. MORAG: By that, who are you referring to?

THE WITNESS: Lehman. The only one that was making marks was Lehman. It

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was their balance sheet.

**Q. From whom did you obtain that understanding? Can I just caution you, if it is a Barclays person, just tell me their name? I don't want to know the substance of the conversation.**

A. No, I understand that.

**Q. Yes.**

A. I don't remember the name. I have a recollection of someone being involved in those discussions coming into the room. I believe it was -- where lawyers and other folks from the other side were in the room and reported what I had characterized in my testimony a minute or two ago. But I don't remember the name of the individual from Barclays.

**Q. Do you know if Lehman did, in fact, change its marks?**

A. I have no way of knowing that.

**Q. Did you or anyone else from Cleary ever ask that question in the week beginning -- well, from Tuesday, September 16th through the closing of the transaction on**

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**the 22nd?**

A. No.

**Q. Actually, will you turn to, in the Asset Purchase Agreement, which is Exhibit 1. If I can ask you, please, Mr. Lewkow, to turn to page 6, which contains the definition of "Purchased Assets."**

**And in particular, if you would take a look at subsection (d) of that definition.**

A. Yup.

**Q. Do you see there's a reference there to various categories of securities. Let met read it. "Government securities, commercial paper, corporate debt, corporate equity, exchange-traded derivatives and collateralized short-term agreements with a book value as of the date hereof of approximately \$70 billion (collectively 'long positions')." Do you see that?**

A. I do.

**Q. Where did the \$70 billion come from that was put into subsection (d) of the definition of "Purchased Assets"?**

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A. From Lehman.

**Q. Was it Barclays' understanding at the time that that was an accurate estimation of the book value of the described assets?**

MR. MORAG: Objection to form.

A. To my knowledge, it was Barclays' understanding that it represented what Lehman Brothers -- having considered the discussions I described earlier in terms of what they concluded, after hearing Barclays, was the proper mark to take on its balance sheet. That it reflected Lehman's conclusions.

**Q. Was the term "book value" used for a reason in subsection (d) in the definition of "Purchased Assets"?**

MR. HUME: Objection. Vague.

A. Who's -- yeah, whose reason?

**Q. Well, was it supposed to say "market value"?**

A. Not all assets on the balance sheet have a market value. There are -- it is my understanding. Again, I'm not an expert, a broker-dealer expert or a market expert or a valuation expert, but it is my understanding

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that for some positions where there is no active market, that other -- other things go into how a broker-dealer is supposed to mark their -- their valuation from an accounting standpoint.

**Q. Was it a considered choice of the people who drafted the Asset Purchase Agreement to use the phrase "book value" instead of some other phrase such as "market value"?**

MR. HUME: Objection. Vague and lacks foundation.

A. Can I have the question read back, please?

(Record read.)

A. I don't know how to answer that question, final question.

Every -- we tried as a group, Weil Gotshal, Simpson Thacher, Sullivan & Cromwell, Cleary Gottlieb, tried to do the best we could in drafting this Agreement under extraordinarily unusual, difficult circumstances.

I do recall that, that this was one

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of those final changes that was added in handwriting, if I had the other version of the Agreement. And somebody, I believe on Lehman's side of the table said, suggested we add in words such as -- to categorize that what we were talking about were, you know, a disfunction of assets. And it was for that purpose that it was referenced.

And I believe that it was first suggested -- and again, I don't know from whom, it might have been a Lehman person. It might have been one of their lawyers. Said, let's say, with a -- you know, with a marking -- with marks of 70 billion, or some words of that sort.

And some lawyer -- again, I don't know on which side. Because this was all being done in group session issue -- said, "Well, should we use the word" -- "from a legal, instead of saying 'marks', should we use the word 'book value'?"

And that's the word that went in.

But I don't think people were trying to draw a distinction between book value and marks, at

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least from what this lawyer believed, the lawyer from Weil, understood "book value" to mean in the context of financial assets held by a broker-dealer.

**Q. Did anyone from the Barclays side of the table -- by that I'm including Barclays personnel or Cleary, ask for or get any information to indicate whether the value of \$70 billion described in subsection (d) was an accurate description of Lehman's book value for those classes of securities?**

MR. MORAG: Object to the form.

A. As I told you, as I believe I testified, I believe we were in a group told that Lehman was going to remark certain portfolio assets to reduce them. I assumed that Lehman had done -- it never occurred to me, when they talked about "marks", I assumed that it reflected whatever Lehman had, therefore, done. And therefore, book value likewise.

**Q. So from what we talked about so far, would it be fair to say that the understanding was that Lehman negotiated to**

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**reduce its marks?**

MR. MORAG: Object to the form.

A. I'm not going to characterize. I have -- you're trying to characterize what I testified to. I stand by the accuracy of my testimony. But I would not -- I would not -- I would not call that "negotiated." It is what it is.

**Q. Mr. Lewkow, don't get me wrong. I'm not suggesting any lack of credibility of your testimony. What I'm looking for is your best memory of what people talked about at the time?**

A. I've given you my best.

**Q. Do you remember anything else in terms of discussions concerning the use of the phrase "book value" in subsection (d)?**

A. No.

**Q. Let me show you what's previously been marked as Exhibit 518. Take a look at the document. My questions will go to the notations on page 7.**

MR. HUME: Page which?

MR. MORAG: 7. Of the document

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<p>1 -Lewkow-</p> <p>2 itself, not the Bates number.</p> <p>3 A. Yup?</p> <p>4 <b>Q. And you referred a few moments ago,</b></p> <p>5 <b>Mr. Lewkow, to the addition of the phrase</b></p> <p>6 <b>"book value" in a handwritten note, in a</b></p> <p>7 <b>handwritten annotation. Is this the document</b></p> <p>8 <b>that you were remembering?</b></p> <p>9 A. It appears to be, yes.</p> <p>10 <b>Q. At least I wasn't clear as to</b></p> <p>11 <b>whether you have a memory as to which side of</b></p> <p>12 <b>the negotiations added that phrase. Do you</b></p> <p>13 <b>recall whether it was Lehman or Barclays, or</b></p> <p>14 <b>do you not recall either side?</b></p> <p>15 A. As I testified, it was a suggestion</p> <p>16 of someone on the Lehman side that words of</p> <p>17 that nature be added, yes.</p> <p>18 <b>Q. Do you recall who on the Lehman</b></p> <p>19 <b>side?</b></p> <p>20 A. No. I believe it was not one of</p> <p>21 their outside lawyers. I believe it was</p> <p>22 somebody from Lehman itself, but I have no</p> <p>23 recollection who.</p> <p>24 <b>Q. If you can turn back. Actually, I</b></p> <p>25 <b>created kind of a document mess in front of</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 <b>you.</b></p> <p>3 A. It is all right.</p> <p>4 <b>Q. Why don't you fold those up? And</b></p> <p>5 <b>let go back to your Declaration for a minute.</b></p> <p>6 A. Sure.</p> <p>7 (Witness complying.)</p> <p>8 <b>Q. Actually, just before we go back to</b></p> <p>9 <b>your Declaration?</b></p> <p>10 MR. GAFFEY: Bridgett, can I have</p> <p>11 25, please?</p> <p>12 <b>Q. Mr. Lewkow, I put before you a copy</b></p> <p>13 <b>of what previously has been marked as</b></p> <p>14 <b>Exhibit 25.</b></p> <p>15 <b>You referred a few moments ago to a</b></p> <p>16 <b>Clarification Letter. Is that the</b></p> <p>17 <b>Clarification Letter to which you were</b></p> <p>18 <b>referring?</b></p> <p>19 A. Yes. It appears to be.</p> <p>20 <b>Q. What was the purpose of the</b></p> <p>21 <b>Clarification Letter?</b></p> <p>22 A. The Clarification Letter was, as</p> <p>23 set forth in the opening paragraph, "To</p> <p>24 clarify the intent of the parties with respect</p> <p>25 to certain provisions of the Asset Purchase</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 -Lewkow-</p> <p>2 <b>Agreement, supplement in certain respects the</b></p> <p>3 <b>agreements of the parties stated therein, and</b></p> <p>4 <b>amend the Asset Purchase Agreement in certain</b></p> <p>5 <b>respects."</b></p> <p>6 <b>Q. Now, are there particular portions</b></p> <p>7 <b>of the Agreement that were amended or are</b></p> <p>8 <b>there particular portions that were</b></p> <p>9 <b>supplemented or are there particular portions</b></p> <p>10 <b>that were clarified?</b></p> <p>11 MR. MORAG: Objection to the form.</p> <p>12 MR. HUME: Objection to the form</p> <p>13 and that it calls for an intersection</p> <p>14 of the agreement. And generally</p> <p>15 Barclays will object to the extent you</p> <p>16 ask the witness to give legal</p> <p>17 interpretations of the contract as</p> <p>18 revealing privilege.</p> <p>19 A. The answer is -- the document is</p> <p>20 the document. No one ever tried to say, all</p> <p>21 right, this clause is a supplement; this</p> <p>22 clause is an amendment; this clause is -- they</p> <p>23 are what they are. Certain -- certain things</p> <p>24 did clarify; certain things amended. No</p> <p>25 one -- there was no reason -- there was no</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 <b>effort to allocate into buckets in this</b></p> <p>3 <b>document.</b></p> <p>4 <b>Q. Do you recall if the use of the</b></p> <p>5 <b>word "amend" was a deliberate drafting choice?</b></p> <p>6 MR. MORAG: Objection.</p> <p>7 MR. GAFFEY: That's a bad question.</p> <p>8 Let me withdraw that question.</p> <p>9 <b>Q. Do you recall if the word "amend"</b></p> <p>10 <b>was added at some point during exchanging</b></p> <p>11 <b>drafts of the Clarification Letter?</b></p> <p>12 A. I would need to see all the drafts</p> <p>13 to be sure. But my recollection is yes.</p> <p>14 <b>Q. Okay. I'm going to show you the</b></p> <p>15 <b>draft, so I'm not going to ask you to</b></p> <p>16 <b>speculate and pinpoint.</b></p> <p>17 <b>Do you recall any discussions</b></p> <p>18 <b>between the party, that is between Lehman and</b></p> <p>19 <b>Barclays or their representatives, about</b></p> <p>20 <b>adding the word "amend" to the Clarification</b></p> <p>21 <b>Letter?</b></p> <p>22 A. I have a vague recollection that</p> <p>23 with the very first draft of the Clarification</p> <p>24 Letter, which was prepared very quickly by</p> <p>25 someone -- and I don't know which side --</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

-Lewkow-

after the Asset Purchase Agreement had been signed and filed with the Court on Wednesday morning, that the original first draft was a page or two and it clearly was truly nothing other than clarification. And so that the first draft did not use the word "amendment."

At some later point, as things got more complicated and things were happening, it became -- there was discussion that we should add the word "amend." That is my understanding.

**Q. Do you recall who was involved in those discussions?**

A. People from Cleary Gottlieb and people from Weil Gotshal, and probably Simpson Thacher.

**Q. Do you have a more specific memory of which people? I know it was a pretty tumultuous week. But do you recall who in particular was involved in those discussions?**

A. It was more in the direct conversations between -- I think most of the conversations on the Clarification Letter were on Barclays side between some combination,

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Duane McLaughlin, David Leinwand; Robert Davis; some cases me, but not primarily me; and various people from Weil Gotshal which I believe included Robert Messineo, I may be mispronouncing his name, David Murgio, maybe Tom Roberts and I'm not sure who else.

**Q. Do you know if Harvey Miller was involved in those discussions?**

A. Which discussions? You started -- I probably went too far in answering your question.

**Q. I don't know who led who astray there.**

**The question, the issue is what you talked about a minute ago --**

A. The word "amendment"?

**Q. Yes. That it became more complex and I decided to add the word "amendment," whether Mr. Harvey Miller was involved in those discussions.**

A. I don't think -- I don't know what Mr. Miller was doing talking internally with his colleagues or with his clients. Did he participate in the exact wording of that? I

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don't know. I do have a distinct recollection of him describing to the Court at the sale hearing that Friday evening that there were major changes in the deal.

So I can't imagine -- I don't want to speculate. I do not recall specifically whether he was involved in adding the word "amend" in that clause.

**Q. Was the Clarification Letter meant to memorialize those major changes in the deal?**

MR. MORAG: Object to form.

A. I'm picking up the Clarification Letter. It was made to both supplement, clarify and amend the Asset Purchase Agreement. And it was intended to be consistent with what the Court had been told this Friday evening.

**Q. Were you yourself present in court on the sale hearing on the 19th?**

A. I was.

MR. MORAG: Yes.

MR. GAFFEY: Yes. Okay.

**Q. The Clarification Letter,**

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**Exhibit 25, sets forth certain changes in the definition of "Purchased Assets" from the original Asset Purchase Agreement; is that correct?**

MR. HUME: Object to the form.

A. Can I look at --

**Q. Sure.**

A. -- both at the Clarification Letter and the Asset Purchase Agreement?

**Q. Look at whatever you need to look at.**

A. Thank you.

(Witness reviewing document.)

A. Yes.

**Q. While you were present in court, was Judge Peck told about the changes in the definition of "Purchased Assets"?**

MR. MORAG: Object to the form.

A. You can read the transcript as well as I can, and I think it speaks for itself.

I think that what the judge was told was about the substantive changes in the deal, major changes in the deal that had been orally agreed to, is my understanding, by

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2 representatives of Lehman and Barclays in a  
3 couple of hours preceding the beginning of the  
4 court hearing.  
5 So it does not mean that -- as the  
6 Court was well aware and as the Court noted,  
7 that he did not have the document. The  
8 document did not yet exist but, you know,  
9 major changes were described by Mr. Miller and  
10 Ms. Fife to the Court.

11 **Q. And in Cleary Gottlieb's view at**  
12 **the time, were the changes as described by**  
13 **Mr. Miller and Ms. Fife to the Court at the**  
14 **hearing, accurate and complete?**

15 MR. MORAG: Object to the form.

16 A. Yes.

17 **Q. Were any changes to the transaction**  
18 **discussed or agreed upon after the sale had**  
19 **been concluded, that were incorporated in the**  
20 **Clarification Letter?**

21 MR. MORAG: Object to the form.

22 A. Well, one -- one thing that was  
23 changed that I recall related to the  
24 residential mortgages, the so-called RESIs.

25 The original Asset Purchase

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1 -Lewkow-  
2 Agreement had -- contained a provision that  
3 treated the residential mortgages differently  
4 than any other category of assets and  
5 provided -- can I look at the Agreement?

6 **Q. Sure. I think you might be looking**  
7 **for 1(e) in the definition of "Purchased**  
8 **Assets"?**

9 A. He knows where all the clauses are  
10 here.

11 **Q. Page 6.**  
12 **(Witness reviewing document.)**

13 A. Right. So the original Asset  
14 Purchase Agreement provided that the Purchased  
15 Assets that Barclays would be acquiring  
16 included a 50 percent interest in the  
17 positions in the residential mortgage  
18 securities.

19 At some point on Thursday, late  
20 Thursday or early Friday -- I have no  
21 recollection of when it was precisely -- an  
22 amendment No. 1 to the Asset Purchase  
23 Agreement was executed by the parties that was  
24 addressed -- was done to address a problem.

25 There was real uncertainty as to

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1 -Lewkow-  
2 whether the deal could be completed because of  
3 issues that DTC wanted assurances that it was  
4 being -- it would be protected in certain  
5 respects, the details of which I have -- was  
6 not involved in, and that I don't recall great  
7 detail.

8 But the amendment instead provided  
9 that the 50 percent interest that Lehman was  
10 going to keep, as I recall, was instead going  
11 to be delivered -- and I don't remember the --  
12 I have to look at amendment No. 1, but it was  
13 going to be delivered instead to DTC. And if  
14 at the end of some period and the like it  
15 turned out that to secure up to, I believe,  
16 250 million. But again, I would need to look  
17 at amendment No. 1.

18 But that to the extent that there  
19 was some excess available, it would go back to  
20 Lehman. So that Lehman still might end up  
21 having some interest in the RESIs to the  
22 extent that DTC did not need them to protect  
23 it in connection with the Lehman positions.

24 The Court was, as I recall in the  
25 court hearing, Mr. Miller and Ms. Fife made

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1 -Lewkow-  
2 reference to this provision.

3 It turned out that the parties  
4 learned at some point, Friday or Saturday, I  
5 believe, that, in fact, the so-called  
6 residential real estate mortgage securities or  
7 RESIs, that Lehman didn't have such positions  
8 available to transfer to Barclays in the first  
9 place. So there were no such -- and the  
10 reasons were -- and I really don't recall. I  
11 don't know if I ever knew in detail.

12 Some of those positions had already  
13 been traded; they no longer owned them; some,  
14 they may have been pledged to third parties;  
15 some would have involved, to the extent there  
16 were separate double counting with other  
17 securities that were getting outside this  
18 provision. And accordingly, there were no  
19 RESIs of the sort that the Court had been told  
20 about by Mr. Miller or Ms. Fife in the sale  
21 hearing. So that provision was eliminated in  
22 the Clarification Letter which basically  
23 amended the agreement to unwind amendment No.  
24 1.

25 **Q. Just so I'm clear we don't have a**

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1 -Lewkow-  
2 the Wednesday hearing and the Friday hearing,  
3 I don't recall any changes to the deal after  
4 that, you know, at this -- at this -- at this  
5 time.

6 **Q. Take a look, if you would,**  
7 **Mr. Lewkow at Paragraph 1, and tell me if**  
8 **there are changes to the definition of**  
9 **"Purchased Assets" affected by the**  
10 **Clarification Letter, changes to the**  
11 **definition from the Asset Purchase Agreement?**

12 MR. MORAG: You're asking him --

13 A. Yes.

14 MR. MORAG: -- the Clarification  
15 Letter?

16 A. Yes.

17 MR. MORAG: The last thing --

18 A. The answer is yes. There was a  
19 change in the definition, that's correct.

20 **Q. Do you know if the change in the**  
21 **definition of "Purchased Assets" was brought**  
22 **to the Court's attention?**

23 A. There was --

24 MR. MORAG: Object to the form.

25 A. The Court was told about the

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1 -Lewkow-

2 substance of the deal. The Court was not told  
3 about clause, actual clause Y or clause Z and  
4 the like. So I can't answer that question  
5 other than to say, you know, you can read the  
6 transcript and I do not believe the words  
7 anyone said, and so such and such a clause or  
8 such and such a definition will be  
9 appropriately changed. That's not the way the  
10 hearing went.

11 **Q. So, for example, no one, to your**  
12 **knowledge, told the Court that the definition**  
13 **of "Purchased Assets" would be changed to now**  
14 **include securities owned by LBI and**  
15 **transferred to Purchaser or its affiliates**  
16 **under the Barclays Repurchase Agreement? I'm**  
17 **referring to Paragraph 1A, subsection (ii).**

18 MR. MORAG: Objection to form.

19 A. To the extent that -- a couple of  
20 things. First of all, that was not -- I do  
21 not believe that was a change in the deal.  
22 Barclays had agreed, with certain specified  
23 exception, to acquire all of the assets used  
24 in the business. Who financed those assets at  
25 a given point in time I don't think is

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1 -Lewkow-  
2 relevant to that question.  
3 At the time the Asset Purchase  
4 Agreement was signed, it's my understanding  
5 that, you know, a lot of the assets were in  
6 the form -- were being financed overnight by  
7 the Federal Reserve pursuant to a repo.

8 At some point, Thursday or the  
9 like, Barclays had taken the fed out of the  
10 repo and provided the financing. But it was  
11 the same -- or it should have been, if the  
12 assets had been there as had been thought.  
13 But those assets, the fact that we added a  
14 reference to "repo" doesn't change whether the  
15 substance of the transaction changed.

16 **Q. Was there a reason that that**  
17 **particular phrase was added to the**  
18 **Clarification Letter then?**

19 MR. MORAG: Objection. What  
20 particular phrase?

21 A. I think you're going to have to be  
22 more specific.

23 **Q. Well, was there discussion back and**  
24 **forth between the parties about putting that**  
25 **language in the Clarification Letter,**

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1 -Lewkow-

2 **referring to the repo assets?**

3 A. Can you point me to the exact  
4 language, please?

5 **Q. Paragraph 1(a)(ii)(A), "The**  
6 **securities owned by LBI and transferred to**  
7 **Purchaser or its affiliates under the Barclays**  
8 **Repurchase Agreement, as defined below, as**  
9 **specified on Schedule A previously delivered**  
10 **by Seller and accepted by Purchaser." That**  
11 **language.**

12 A. There were, as you know, a number  
13 of drafts that were circulated of the  
14 Clarification Letter. And my recollection is  
15 that at some point, as lawyers working on the  
16 Clarification Letter first learned and then  
17 focused on the fact that a lot, most but not  
18 all of the assets had been in the -- referred  
19 to in the definition of, I believe, "Long  
20 positions" in the Asset Purchase Agreement,  
21 were now -- had been financed by Barclays at  
22 the Feds' request and were in the repo, some  
23 lawyer -- and I don't remember whether it was  
24 initially from Weil Gotshal or Cleary  
25 Gottlieb, but there was agreement that it made

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-Lewkow-

sense to refer to the repo in this context.

**Q. Do you recall when it was that the lawyers first learned that assets that had been originally described in the long positions were, in fact, in the repo? When did that happen?**

MR. MORAG: Object to the form.

A. Yeah, I think -- first of all, I can't answer for all lawyers. That would include the Weil Gotshal lawyers and other lawyers on behalf of...

As to Cleary Gottlieb, at some point I believe, at least one of my colleagues that Thursday had heard that there had been -- that Barclays had extend -- provided repo financing to Barclays. I'm not sure. It is my understanding none of the details, we had not been involved in that at all. But it was mentioned, and we learned more about it on Friday and over the weekend.

But even as -- even as of the Court hearing we knew very little about it.

**Q. Did there come a time when you learned that the Repurchase Agreement had been**

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-Lewkow-

**terminated by Barclays?**

MR. MORAG: Object to the form.

A. There came a time when I learned -- when I -- when I learned that -- I'm not sure how I can answer, whether I can answer this without talking about a privileged conversation. Can I have...

**Q. Absolutely. Just before you talk to your lawyers, I'm focusing on the timing here. When did you learn it? We will tread carefully so that --**

A. When did I learn it requires -- I have to deal with your characterization. Can I hear the question again?

**Q. Let me put a question, and then if you need to consult, you can do that.**

A. Sure.

**Q. The question is: Did there come a time when you learned that the Repurchase Agreement had been terminated by Barclays?**

A. There came --

MR. MORAG: Objection to form.

MR. HUME: I will object and instruct you not to answer to the

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-Lewkow-

extent it would reveal a privilege from Barclays.

MR. GAFFEY: As to when?

MR. HUME: Well, you assumed when --

MR. GAFFEY: It is attorney --

MR. HUME: It was terminated. What does terminated mean?

MR. GAFFEY: It means ended.

A. It's a legal... If you want to ask the question -- can I talk to counsel for Barclays and my counsel?

**Q. Sure. Absolutely.**

**(Whereupon, a recess was taken from 11:49 a.m. to 11:52 a.m.)**

A. Before the break you asked me a question about did there come a time of learning about the termination of the repo.

Of course, the repo did terminate, as I understand it, when we closed on Monday, but I assume that's not what you're asking.

**Q. It is not.**

A. There did come a time over the weekend, I don't recall whether it was

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-Lewkow-

Saturday or Sunday, where we did learn -- I think I was reminded in preparing for the deposition, that it was -- we initially learned it when we were copied, or not copied and then forwarded on an e-mail from Sullivan & Cromwell who was co-counsel with us for Barclays, and/or to -- to Weil, that there had been an inadvertent notice given to Barclays by folks in the -- I don't know who, but someone at Barclays had sent a notice of termination of the repo at some point, I believe late Friday, and that that was done in error and should be undone.

So if that's what you're asking about, you've heard what my recollection is.

**Q. It is. Let me show you what's previously been marked as Exhibit 27.**

**Have you seen that document before, sir?**

**(Witness reviewing document.)**

A. No, I don't believe I have.

**Q. You learned about the inadvertent termination of the repo over the weekend; is that right?**

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<p>1 -Lewkow-</p> <p>2 A. Yes.</p> <p>3 Q. Was it the Saturday or the Sunday?</p> <p>4 A. I don't know.</p> <p>5 Q. Were you involved in any</p> <p>6 discussion, you or anyone else from Cleary or</p> <p>7 Barclays, involved in any discussions from the</p> <p>8 Lehman folks or Weil Gotshal about the</p> <p>9 inadvertent termination of the repo?</p> <p>10 A. It is my -- I don't think I</p> <p>11 personally was, but here as a</p> <p>12 30(b)(6) witness --</p> <p>13 Q. You are Cleary Gottlieb, sir.</p> <p>14 A. -- internally. I was perfectly</p> <p>15 happy not knowing in my life.</p> <p>16 It is my understanding that</p> <p>17 following up on the e-mail from Sullivan &amp;</p> <p>18 Cromwell and the like, that the -- that there</p> <p>19 may have been some discussions about, you</p> <p>20 know, implementing this and getting it right</p> <p>21 to -- to -- because it was, as I -- as I was</p> <p>22 told at the time and we were told at the time,</p> <p>23 and as I testified to, it was sent in error.</p> <p>24 But I don't recall any other discussion.</p> <p>25 I'm not aware of any other</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 discussion that Cleary Gottlieb was aware of</p> <p>3 with the other side on, on this subject.</p> <p>4 Q. That's sort of where I'm leading.</p> <p>5 Let me rephrase the question so you'll know</p> <p>6 what it is I'm looking for here.</p> <p>7 What knowledge does Cleary Gottlieb</p> <p>8 have that Weil Gotshal or Lehman knew about</p> <p>9 the termination of the repo, that it had been</p> <p>10 terminated?</p> <p>11 A. I believe, as I testified a minute</p> <p>12 ago, that there was an e-mail that Sullivan &amp;</p> <p>13 Cromwell on behalf of Barclays sent to Weil</p> <p>14 Gotshal. And I believe there were some</p> <p>15 follow-up conversations referencing the fact</p> <p>16 that there had been an inadvertent notice that</p> <p>17 had been sent on this subject. Can I look at</p> <p>18 the Clarification Letter?</p> <p>19 Q. Sure. Paragraph 13 is probably</p> <p>20 where you want to go.</p> <p>21 A. Fine.</p> <p>22 Q. The language in Paragraph 13 was</p> <p>23 supplied by Sullivan &amp; Cromwell, correct?</p> <p>24 A. I would have to look at this and</p> <p>25 compare it to the words in the e-mail. I</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 -Lewkow-</p> <p>2 don't know the answer to that.</p> <p>3 Q. There is a reference in Paragraph</p> <p>4 13 to the Notice of Termination, do you see</p> <p>5 that?</p> <p>6 A. Yes.</p> <p>7 Q. Is the notice of termination that</p> <p>8 is referred to in Paragraph 13 of the</p> <p>9 Clarification Letter, the notice that we've</p> <p>10 marked as Exhibit 27?</p> <p>11 A. Well, it says it is a notice of</p> <p>12 termination in Paragraph 13 dated</p> <p>13 September 19. Exhibit 27 that you've shown</p> <p>14 me, that as I testified I do not believe I've</p> <p>15 ever seen, it is dated September 19th. It is</p> <p>16 from Barclays, it is to Lehman, and it says it</p> <p>17 is a notice of termination. So it appears to</p> <p>18 be it is, but that's all I can tell you.</p> <p>19 Q. Was there any discussion between</p> <p>20 the folks on the Barclays side of the table,</p> <p>21 including Cleary, and the folks on the Lehman</p> <p>22 side of the table including Weil Gotshal,</p> <p>23 about whether there were implications under</p> <p>24 the Bankruptcy Code to the fact that the repo</p> <p>25 had been terminated?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 A. It is my understanding that to the</p> <p>3 best of Cleary Gottlieb's knowledge, no.</p> <p>4 Q. Did Cleary Gottlieb have</p> <p>5 communications with any other person or entity</p> <p>6 outside of your client, outside of Barclays</p> <p>7 and Cleary, about Section 559 of the</p> <p>8 Bankruptcy Code in connection with the</p> <p>9 termination of the repo?</p> <p>10 MR. HUME: Outside of any</p> <p>11 privilege.</p> <p>12 MR. GAFFEY: Outside of any</p> <p>13 privilege, yes.</p> <p>14 A. To the best of my knowledge, no,</p> <p>15 subject to this caveat. You will be taking my</p> <p>16 partner's Ed Rosen's deposition. He was</p> <p>17 involved in the discussions with DTC and other</p> <p>18 clearance -- clearing entities. And since he</p> <p>19 was going to be the 30(b)(6) witness on those</p> <p>20 discussions, I have not consulted him. So as</p> <p>21 to whether or not there was anything on that</p> <p>22 point, I do not know the answer on behalf of</p> <p>23 Cleary Gottlieb. Subject to that, the answer</p> <p>24 is no.</p> <p>25 Q. Were there discussions about 559</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 -Lewkow-</p> <p>2 with any other self-regulating organizations</p> <p>3 or governmental agency concerning Section 559</p> <p>4 of the Bankruptcy Code.</p> <p>5 A. Not to my knowledge.</p> <p>6 Q. Mr. Lewkow, I'm going to show</p> <p>7 you --</p> <p>8 A. This is starting to look like my</p> <p>9 desk at the office.</p> <p>10 Q. I'm trying to make you feel at</p> <p>11 home. Let me add this to the pile there and</p> <p>12 show you what previously was marked as Exhibit</p> <p>13 579B, a Declaration of Alan Kaplan, deputy</p> <p>14 general counsel of Barclays, that's been</p> <p>15 submitted in Barclays's opposition papers on</p> <p>16 Rule 60. Have you seen this before?</p> <p>17 A. I can't remember if someone showed</p> <p>18 me this in the last few days or not.</p> <p>19 Q. Take a minute if you would --</p> <p>20 A. I wouldn't swear that I haven't.</p> <p>21 But if so, I didn't read it very careful.</p> <p>22 Q. There's a statement that Mr. Kaplan</p> <p>23 makes that I want to see if you had any</p> <p>24 knowledge about. And it's in Paragraph 4 of</p> <p>25 his declaration. He is referring to the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 notice going out erroneously, I'm</p> <p>3 paraphrasing. Then he says, "The parties</p> <p>4 corrected that error in Paragraph 13 of the</p> <p>5 Clarification Letter." Do you see that?</p> <p>6 A. Yes, let me read all of</p> <p>7 Paragraph 4, if I may?</p> <p>8 Q. Sure.</p> <p>9 (Witness reviewing document.)</p> <p>10 A. Remind me of the question?</p> <p>11 Q. I think the question was: Do you</p> <p>12 see that? But --</p> <p>13 A. I do.</p> <p>14 Q. Okay. When Mr. Kaplan says "the</p> <p>15 parties", plural, "The parties corrected the</p> <p>16 problem with Paragraph 13", I show you that to</p> <p>17 see if it refreshes your recollection in any</p> <p>18 way whether there were any discussions between</p> <p>19 the parties, that is between Barclays and its</p> <p>20 representatives and Lehman and its</p> <p>21 representative, about the problem created by</p> <p>22 the termination of the repo?</p> <p>23 MR. MORAG: Objection to the form.</p> <p>24 A. I don't know what you mean by the</p> <p>25 "problem created." But I believe it was</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 -Lewkow-</p> <p>2 discussed between the fact that this change</p> <p>3 needed to be made, that it was sent in error.</p> <p>4 It was discussed at least briefly between the</p> <p>5 Barclays side, including Cleary and Sullivan &amp;</p> <p>6 Cromwell, and the Lehman side including Weil,</p> <p>7 yes.</p> <p>8 Q. Again, does it refresh your</p> <p>9 recollection, where you read Mr. Kaplan</p> <p>10 talking about "correcting an error," does it</p> <p>11 refresh your recollection about whether there</p> <p>12 were any discussions between the Barclays side</p> <p>13 of the table including Cleary, and the Lehman</p> <p>14 side of the table including Weil, about</p> <p>15 implications into the Bankruptcy Code from the</p> <p>16 termination?</p> <p>17 A. I answered that question. To the</p> <p>18 best of my knowledge, there were no such</p> <p>19 discussions.</p> <p>20 Q. If I could ask you to restrict your</p> <p>21 answer, sir, to yes or no to the question I'm</p> <p>22 about to ask you.</p> <p>23 Were there any discussions between</p> <p>24 Barclays and Cleary concerning implications</p> <p>25 under the Bankruptcy Code of the termination</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 of the repo? Yes or no?</p> <p>3 MR. HUME: Objection to the extent</p> <p>4 it calls for privileged communications.</p> <p>5 MR. GAFFEY: I'm not sure yes or no</p> <p>6 does. And I think I'm entitled to that</p> <p>7 information under local Rule 26.</p> <p>8 MR. HUME: Well, what's your basis</p> <p>9 for saying --</p> <p>10 MR. GAFFEY: Local Rule 26 provides</p> <p>11 that if privilege is asserted at a</p> <p>12 deposition, I'm entitled to the same</p> <p>13 information that would be included on a</p> <p>14 privilege log, which would be the</p> <p>15 author, recipient, subject matter of</p> <p>16 the communication, of the otherwise</p> <p>17 privileged communication.</p> <p>18 That's why I'm restricting it to a</p> <p>19 yes or no.</p> <p>20 MR. MORAG: The issue here though</p> <p>21 is you did not just ask about the</p> <p>22 subject matter of the termination</p> <p>23 notice being the subject of the</p> <p>24 conversation, you asked for yes or no</p> <p>25 as to the specific advice, whether it</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

-Lewkow-

was discussed.

MR. GAFFEY: Actually, no. I --

MR. MORAG: You asked for the specific advice.

MR. GAFFEY: It is phrased quite carefully not to. That's the point.

That's the topic that would be on the privilege log.

MR. MORAG: No, I believe it would be the Notice of Termination.

MR. GAFFEY: Let me get a yes or no to that. Because I want to see where the instruction not to answer is framed.

BY MR. GAFFEY:

**Q. Were there discussions between Cleary and Barclays concerning the termination of the repo? Yes or no.**

A. Yes.

**Q. When did those discussions take place?**

A. Some point over Saturday or Sunday.

**Q. Were there discussions between Barclays and Cleary Gottlieb about**

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-Lewkow-

**implications under the Bankruptcy Code in connection with the termination of the repo? Again, yes or no, please.**

DI MR. HUME: Again, objection. I instruct the witness not to answer.

I don't believe the privilege log subject matter would have to reveal the specific nature of the communication, request for advice under Section Y, Y, Z. I mean --

MR. GAFFEY: I understand you are going to assert it. I don't want to take time with the colloquy.

MR. MORAG: Hold on one second.

THE WITNESS: Can we talk outside? Is that all right?

(Whereupon, a recess was taken from 12:07 p.m. to 12:09 p.m.)

MR. MORAG: Subject to your agreement that whatever Mr. Lewkow responds will not constitute any waiver of the attorney/client privilege, which you said it wouldn't, but if you confirm that, Mr. Lewkow is prepared to

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answer the question.

MR. GAFFEY: Okay.

THE WITNESS: Can I hear the question?

MR. MORAG: The one that you were prepared to answer.

MR. GAFFEY: I rephrased it. But let's read it back.

THE WITNESS: Let's hear the last question.

(Record read as follows:

"Question: Were there discussions between Barclays and Cleary Gottlieb about implications under the Bankruptcy Code in connection with the termination of the repo? Again, yes or no, please.")

A. To the best of my knowledge, no.

**Q. What needed to be corrected, then, in connection with the termination of the repo? Do you know?**

A. That it was in error. It wasn't supposed to be terminated. I think I was told that it would create a monstrous obligation to

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-Lewkow-

**give notices and so forth and so forth to everyone who was on -- to various party, etcetera. That's all I remember.**

**Q. Did you or anyone else at Cleary Gottlieb have an understanding that upon termination of the repo in financing haircut over and above the amount advanced would need to be repaid into the estate of LBI?**

MR. MORAG: Objection. I think you are asking for a legal opinion from this witness.

MR. GAFFEY: You are right. Let me withdraw that.

**Q. Was there any discussion with anyone outside of the circle of Cleary and Barclays to the effect that the Bankruptcy Code would require the financing haircut in the repo to be paid back into the estate over and above the amount that Barclays had advanced in the Repurchase Agreement?**

A. Not to my knowledge.

MR. MORAG: Objection to characterization.

**Q. Do you know if anyone at Cleary had**

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**-Lewkow-**  
**communications with anyone outside of privilege, that is anyone outside of communications with your client concerning whether anyone would seek to stay the application of 559 of the Bankruptcy Code in connection with the termination of the repo?**

A. Not to my knowledge.

**Q. In your capacity as a 30(b)(6) witness, have you inquired about that topic?**

A. Yes.

**Q. Is there a reason, Mr. Lewkow, that Sullivan & Cromwell was given the responsibility for drafting the language in Paragraph 13 as opposed to Cleary?**

MR. MORAG: Objection.

MR. HUME: Objection. Calls for privilege.

MR. MORAG: Yes, I mean --

THE WITNESS: I think I can give some factual information, if you want me to.

MR. GAFFEY: I do.

THE WITNESS: Let him ask the question.

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**-Lewkow-**  
MR. MORAG: I would ask you to first pose the foundational question of whether he knows there is a reason.  
**Q. Do you know whether there's a reason Sullivan & Cromwell drafted the language in Paragraph 13?**

MR. HUME: I instructed the witness not to answer that. To the extent it reveals privilege, I don't know how you can answer it otherwise.

THE WITNESS: I actually think I can.

MR. HUME: If you can, go ahead.

A. We had, as I testified earlier, basically nothing to do with the creation, the documentation, the implementation of the repo. I don't know whether Sullivan & Cromwell did or not, but we had not. And so I'm not surprised that we had nothing to do with follow-ups with regard to that.

**Q. Let's clean up the pile again and go back to the Lewkow declaration, which is the first thing I showed you. I forget the exhibit number.**

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**-Lewkow-**  
**In Paragraph 4, again, Mr. Lewkow, you say, this is the last sentence, "Further, I do not recall anyone involved in the transaction ever suggesting that the deal was supposed to be a 'wash' with the value of assets acquired equal to the value of liabilities assumed."**

**Did you or anyone else from Cleary Gottlieb ever have conversations with Bart McDade about his understanding of the transaction?**

A. Bart McDade was -- about his understanding of the transaction, he was in the room at the time the Asset Purchase Agreement -- at times when the Asset Purchase Agreement was being negotiated. So in that context, I had -- we sort of had conversations with him. I don't recall any other conversations with him.

**Q. Were any of the conversations with him addressed to the topic of whether or not it was a transaction in which the assets and liabilities were supposed to roughly match?**

MR. MORAG: Object to the form.

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**-Lewkow-**  
A. I have included in my declaration that I do not recall anyone involved in a transaction ever suggesting that. And so that is my recollection. And Bart McDade comes within the term of "anyone."

**Q. I'm asking for a slightly different question.**

**Was the topic ever discussed with Mr. McDade?**

A. Not to my knowledge.

**Q. Was the topic ever discussed with anyone --**

MR. HUME: Objection. Go ahead.

A. I don't know what the topic is.

**Q. -- whether --**

A. The deal was the deal, okay. The agreement is reflected in the Asset Purchase Agreement as originally entered into and then as supplemented, clarified and amended by the Clarification Letter.

**Q. I'm assuming, sir -- and correct me if I'm wrong -- that there must have been some discussions between the parties beyond the level of well, the deal is the deal and it is**

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-Lewkow-

A. So it does.

**Q. And the reference to Paragraph 10 is to a balance sheet printed at 11:18 a.m. on 9/16/08?**

A. Yes, it is.

**Q. Does that refresh your recollection in any way?**

A. It seems to be.

**Q. Does any of this refresh your recollection as to whether there were discussions during the course of the week after the APA had been signed about that balance sheet marked as Exhibit 19?**

A. My recollection, and I don't recall whether we knew this was going to be in the draft or not, but my recollection is that this showed up and we didn't think it was appropriate to start dealing with that document, which we had not intended to and had not included as an exhibit to the Asset Purchase Agreement. And so this did not stay in the Clarification Letter.

**Q. Were there any discussions between Barclays and Cleary Gottlieb on the one hand**

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-Lewkow-

**and Lehman and Weil Gotshal on the other about whether or not to include that sheet as an exhibit to the Asset Purchase Agreement?**

A. I believe that during the -- at some point at the very end of the finalization of the Asset Purchase Agreement, and it may have been -- you know, it was a final meeting at which people tried to finalize the Asset Purchase Agreement, and that is the meeting at which a Simpson Thacher associate sat between me and John Findley of Simpson Thacher and tried to act as scribe as the combined group of people around a very large rectangular table, square table reached agreement on final changes. And then she entered in handwritten form, which we have looked at previously or I testified about earlier today.

I believe, I'm not sure, but I believe it was in that context that someone on the Lehman side would have raised the idea, would it make sense to attach this document, Exhibit 19, or some variant thereof to the Asset Purchase Agreement. And a decision was made collectively not to do so.

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-Lewkow-

**Q. What was the basis for the decision made collectively not to do so?**

A. The agreement --

**Q. I withdraw "basis."**

**What was the reason it was decided not to do that?**

A. My recollection is that the piece of paper had been prepared by Lehman and shown to us and the like, and that there was one reference to it that was going into the Asset Purchase Agreement, but that it did not -- the agreement in the deal was to be embodied in the Asset Purchase Agreement, and we had not spent any specific time looking at Exhibit 19 or any variant of it with a view towards having legal significance and what it might mean and how it might modify the Asset Purchase Agreement.

The Asset Purchase Agreement was intended to stand on its own two feet.

**Q. Let me ask you to put before you Exhibit 35. It is included in the packet of documents that I gave you.**

A. Sure. Yes.

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-Lewkow-

**Q. And Exhibit 35, the first page, has an e-mail from David Murgio at 9:15 p.m. GMT, September 19, 2008 to among others you. And it attaches this, another draft of the Clarification Letter?**

A. Correct.

**Q. If you would, again, sir, please turn within the document to the blackline section which begins at page 10279864.**

A. Yup.

**Q. And within the definition of "Purchased Assets," "Excluded Assets" on the first page of that blackline --**

A. On the first page? First what?

**Q. On the first page of the blackline. Okay? Paragraph 1 of the blackline.**

A. Okay. You referred -- I didn't realize 64 was on all the pages.

**Q. It is. It is the first page marked 64.**

A. Okay.

**Q. And it is Paragraph 1, "Purchased Assets."**

The underscored language in that

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<p>1 -Lewkow-</p> <p>2 they ended. I don't know if they were in</p> <p>3 person or over the phone -- between not the</p> <p>4 lawyers, between representatives of Barclays</p> <p>5 and representatives of Lehman. And that was</p> <p>6 going on until very shortly before the Court</p> <p>7 hearing began.</p> <p>8 So while it had been contemplated</p> <p>9 the day before that we would try to have a</p> <p>10 proposed form of, or maybe an actual form, I</p> <p>11 don't recall which, of Clarification Letter to</p> <p>12 provide to the Court, that events made that</p> <p>13 impossible.</p> <p>14 <b>Q. Now, I take it that between the</b></p> <p>15 <b>time of this draft marked as Exhibit 35 and</b></p> <p>16 <b>the finalizing of the Clarification Letter on</b></p> <p>17 <b>Monday, the signing of the Clarification</b></p> <p>18 <b>Letter on Monday, other changes are made. We</b></p> <p>19 <b>will get to those, but I just want to</b></p> <p>20 <b>establish the fact that changes were made over</b></p> <p>21 <b>the weekend, correct?</b></p> <p>22 MR. HUME: Objection, vague.</p> <p>23 Changes to what?</p> <p>24 MR. GAFFEY: To the Clarification</p> <p>25 Letter.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 A. Changes to the draft Clarification</p> <p>3 Letter were made that are reflected in the</p> <p>4 final Clarification Letter that was signed,</p> <p>5 yes.</p> <p>6 <b>Q. And some of those changes were made</b></p> <p>7 <b>over the weekend, Saturday the 20th and Sunday</b></p> <p>8 <b>the 21st, correct?</b></p> <p>9 A. New drafts were being prepared and</p> <p>10 changes to the prior draft were therefore</p> <p>11 made, correct.</p> <p>12 <b>Q. Now, the discussions that you</b></p> <p>13 <b>learned had taken place on Friday morning</b></p> <p>14 <b>between non-lawyers for Lehman and Barclays</b></p> <p>15 <b>that you referred to a moment ago --</b></p> <p>16 A. Morning or early afternoon. I'm</p> <p>17 not sure which.</p> <p>18 <b>Q. Was it your understanding that</b></p> <p>19 <b>those discussions were to include assets in</b></p> <p>20 <b>the deal, to make up for assets that Lehman</b></p> <p>21 <b>had not been able to deliver?</b></p> <p>22 MR. MORAG: Objection to form.</p> <p>23 A. Let me -- I think, I was told --</p> <p>24 and now I want to carefully describe how I was</p> <p>25 told it. But I was told it twice about the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 -Lewkow-</p> <p>2 conversation. I'm doing this and I'm looking</p> <p>3 at my counsel and Barclays counsel, so they'll</p> <p>4 caution me, I think.</p> <p>5 But I was told substantially the</p> <p>6 same. And to the extent there's differences,</p> <p>7 I don't remember which is which and what was</p> <p>8 the difference. I was told twice about the</p> <p>9 results of the conversations that I just</p> <p>10 alluded to that took place between Barclays</p> <p>11 representatives and Lehman representatives</p> <p>12 during the day Friday before the Court</p> <p>13 hearing.</p> <p>14 I arrived at the courthouse shortly</p> <p>15 before the Court was supposed to convene for</p> <p>16 this case. And while I was still outside the</p> <p>17 courtroom, having arrived -- while I was still</p> <p>18 outside -- not outside the courtroom, outside</p> <p>19 the courthouse. While I was still outside the</p> <p>20 Customs House, another car arrived, or taxi</p> <p>21 and out came several Barclays representatives,</p> <p>22 including Michael Klein.</p> <p>23 Michael Klein, I may have said,</p> <p>24 what's going on or what happened or something</p> <p>25 like that --</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 MR. HUME: Why don't I interject.</p> <p>3 THE WITNESS: Okay. I don't have</p> <p>4 to stay with that.</p> <p>5 MR. HUME: To the extent --</p> <p>6 THE WITNESS: Let me jump ahead.</p> <p>7 Let me just jump ahead. Go ahead.</p> <p>8 MR. HUME: Just so the record is</p> <p>9 clear, to the extent Barclays</p> <p>10 representatives communicated to you in</p> <p>11 a privileged setting facts that they</p> <p>12 later communicated in a way that is not</p> <p>13 privileged, you should disclose --</p> <p>14 THE WITNESS: The latter.</p> <p>15 MR. HUME: Be careful, but disclose</p> <p>16 only what was not privileged.</p> <p>17 BY MR. GAFFEY:</p> <p>18 <b>Q. On that point, I want you to go</b></p> <p>19 <b>back to what was next in a minute. But Klein</b></p> <p>20 <b>is there. Who else was there? Anybody non</b></p> <p>21 <b>Barclays was there?</b></p> <p>22 A. Not downstairs, no.</p> <p>23 <b>Q. So it was Barclays people and you?</b></p> <p>24 A. I had a conversation, and he</p> <p>25 summarized the results of the conversation.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

-Lewkow-

We then all went to the courtroom, which was a zoo, if I can use that technical term. And I was near the front of the courtroom near the well.

I was sitting on -- I managed to get a seat which not many of us did -- on the side. I can't remember if there was a jury box in that courtroom or not. If so, I was just in the chairs just inside what would have been a jury box and next to the table at which Weil Gotshal as debtor's counsel was sitting.

And there was a conversation that took place that -- of, you know, somewhere between four and eight people, I can't -- I think it was at least five people, six people, including Michael Klein, myself, Lori Fife, and a few other people. And it may -- among those other people may have been -- I don't think Harvey Miller was one of them. I'm not 100 percent certain. I believe that one of them may have included, one or more of them may have been Lehman Brothers business folks or representatives, or Lazard representatives. I'm not sure. I don't remember.

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-Lewkow-

The only three people I am sure of were present were Michael Klein, Lori Fife and me. There may have been somebody else from Barclays there as well, like Archie Cox. I just don't remember.

And Michael repeated it enough -- as I said in the beginning, I don't recall which conversation is which. And they were in all, to the extent I can recall, they covered the same topic and were consistent with each other and I'm sure he used different words and the like. But he repeated what he had told me outside 30 or 40 or 50 minutes earlier, or 15 or 10 or whatever.

**Q. What did he say?**

A. I thought you'd ask that.

He reported -- and I had -- he reported that it turned out that Lehman and Barclays had both -- officials had both learned in the prior 24 hours that a number of categories of assets that Lehman had told Barclays and agreed before the Asset Purchase Agreement had been signed and were covered by the Asset Purchase Agreement, as to categories

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-- specifically specified categories.

And of course, as you know, Barclays was to get under the Asset Purchase Agreement, except for specified excluded assets, we were supposed to get all assets used in the business. But there were certain assets, including financial assets that were included within that universe but were also -- and so that Barclays had been led to believe were going to be delivered. That would be true whether or not they were also articulated as within the including language that follows in the definition of "Purchased Assets."

But -- so it's the same universe either way. But certain of those assets, which we have been told were among the assets that Barclays would be getting would not -- were not available to be transferred to us. That they either did not own or they had double counted or they were subject to liens in favor of third parties and they could not be delivered. And so he reported that.

And he said that this was -- and again, I believe there may have been a Lehman

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person standing there, but I can't tell you who, or a Lazard person, and that he had created real issues as to whether the deal could be due -- doable.

He went on to describe a number of things that had come out as further investigation as to facts as well as further discussions and negotiations as to what to do, as to whether this deal could be saved and whether there would be no deal and there would be no one to purchase the assets and to purchase the business and leave the creditors to a liquidation scenario.

But he reported on a number of things. First of all, that two category of assets should have been identified that could have been included in assets that Lehman used in the business and, therefore, should be coming to Barclays pursuant to the Asset Purchase Agreement, which had not been specifically ever mentioned or focused on by Barclays. And that those helped to some extent mitigate the shortfall that I just described based on what we had known.

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<p>1 -Lewkow-</p> <p>2 So, we had learned things that</p> <p>3 reduced the pool of assets that were worth --</p> <p>4 substantially all the assets that we were</p> <p>5 getting. But that there were two categories</p> <p>6 of assets that were within what we were</p> <p>7 getting that we had not focused on and that</p> <p>8 Lehman had not told us about were within the</p> <p>9 pool of assets that Lehman had available for</p> <p>10 transfer, that they could transfer and would</p> <p>11 transfer pursuant to the deal.</p> <p>12 And those, those two categories</p> <p>13 were the 15c3-3 reserve account or something</p> <p>14 like that. I'm not sure "reserve" is the</p> <p>15 right account. And where I was told -- I</p> <p>16 remember often this one being told the precise</p> <p>17 number, but I don't remember what number it</p> <p>18 is. But it was slightly over a billion-seven</p> <p>19 in -- and I believe he said in security, but</p> <p>20 he may -- he may not have been that specific.</p> <p>21 And the second was assets in what I</p> <p>22 was told was something called the clearance</p> <p>23 box about -- again, I may have been given a</p> <p>24 more specific number but this one is less</p> <p>25 vivid in my mind, of approximately two billion</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 of assets, and that these assets were</p> <p>3 available and would be transferred by Lehman</p> <p>4 as part of the transfer of essentially all the</p> <p>5 assets that they were going to be giving us.</p> <p>6 I was also told of some discussions</p> <p>7 of changes that needed to be made to the deal</p> <p>8 because that didn't -- the identification of</p> <p>9 those assets, of additional -- those assets</p> <p>10 that would be transferred as part of the deal</p> <p>11 didn't solve by any means the entirety of the</p> <p>12 problem that had been learned by both sides as</p> <p>13 to other assets that could not be transferred.</p> <p>14 And that certain changes to the</p> <p>15 deal were going to be made.</p> <p>16 One was -- and that first, another</p> <p>17 negative change in the deal from Barclays's</p> <p>18 perspective in that there was a -- there was</p> <p>19 in the Asset Purchase Agreement a concept</p> <p>20 of -- I forget what the word was. "Retained</p> <p>21 cash." It was a very strangely drafted</p> <p>22 clause. Because retained cash was Lehman's</p> <p>23 cash that Barclays would get and in a sense it</p> <p>24 was retained because it would be retained for</p> <p>25 use in the business that we were effectively</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 -Lewkow-</p> <p>2 purchasing all the assets of, and certain --</p> <p>3 and assuming certain specified liabilities.</p> <p>4 And so I was told that the fact</p> <p>5 that Lehman would receive the -- Lehman would</p> <p>6 transfer the so-called retained cash was</p> <p>7 dropping away and that Barclays would not get</p> <p>8 that cash. I believe -- I believe I was told</p> <p>9 that they just didn't have free cash sitting</p> <p>10 around, but I don't remember precisely what</p> <p>11 words were used. I don't remember precisely</p> <p>12 what the words were on any, any of these.</p> <p>13 This is my recollection and paraphrase of what</p> <p>14 he told the group in the well in the courtroom</p> <p>15 before the hearing started with a half a dozen</p> <p>16 or so people.</p> <p>17 He also talked about a favorite</p> <p>18 topic, the RESIs, and that it turned out --</p> <p>19 wait a second. Hold on a second. -- no. I</p> <p>20 don't think -- I withdraw that. I don't think</p> <p>21 there is anything about the RESIs.</p> <p>22 He reported that another change</p> <p>23 that needed to be made that the parties had</p> <p>24 agreed to orally was to eliminate the</p> <p>25 provision that I testified about earlier in</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 response to some -- some of your questions</p> <p>3 that provided that if Barclays sold certain of</p> <p>4 the financial positions within one year and</p> <p>5 made a profit, that certain amounts of</p> <p>6 additional consideration or compensation would</p> <p>7 be paid to -- to Lehman, that that provision</p> <p>8 had also -- would be deleted.</p> <p>9 That -- let me just think if there</p> <p>10 was anything else that I can recall. That's</p> <p>11 my recollection.</p> <p>12 MR. GAFFEY: Do you want to take a</p> <p>13 lunch break?</p> <p>14 MR. MORAG: Yes. I believe it's</p> <p>15 available.</p> <p>16</p> <p>17 (Luncheon recess taken at 1:10 p.m.)</p> <p>18</p> <p>19 ---</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

1 -Lewkow-  
2 AFTERNOON SESSION  
3 (Time noted: 1:53 p.m.)  
4 VICTOR I. LEWKOW, resumed as a  
5 witness and testified as follows:  
6 CONTINUED EXAMINATION BY  
7 MR. GAFFEY:

8 Q. Mr. Lewkow, before the break you  
9 were telling us about a conversation between  
10 Michael Klein, Lori Fife, yourself and some  
11 others, about discussions that had taken place  
12 in the morning before the sale hearing.

13 Was there any discussion between  
14 Barclays and its representatives on the one  
15 hand, and Lehman and its representatives on  
16 the other about what, if anything, of those  
17 facts should be told to the judge in the sale  
18 hearing?

19 A. First of all, when you say -- you  
20 said "morning," I was very careful. I believe  
21 it continued until shortly before the hearing  
22 started at one o'clock, so I was not limited  
23 to the morning. The answer to your question  
24 is, no.

25 Q. As you sat through the sale hearing

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1 -Lewkow-  
2 and heard the presentations to the Court from  
3 the various lawyers who spoke to the judge,  
4 was Cleary and Barclays's comfortable that the  
5 aspect of the deal that had been discussed in  
6 that session prior to the sale hearing were  
7 accurately disclosed to the judge?

8 MR. MORAG: Object to the form.  
9 Certainly you speak to Cleary. As to  
10 Barclays, I'm not sure if that calls  
11 for a privilege conversation.

12 MR. GAFFEY: Let me just ask as to  
13 Cleary. That's a good point.

14 A. As was my understanding was,  
15 typical the debtor's counsel on a sale would  
16 normally be the ones who take the -- make the  
17 presentation to the Court.

18 THE REPORTER: Can I ask you to  
19 please speak up? Thank you.

20 THE WITNESS: I'll try.

21 A. As typical, Weil as counsel for the  
22 debtor was making the presentation. Maybe in  
23 other context people would have seen a draft  
24 of what Lori Fife was going to say or the  
25 like. But certainly, since it was such a

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1 -Lewkow-  
2 moving target we had, as I told you in your  
3 last question, really hadn't had any  
4 consultation as to what exactly she and  
5 Mr. Miller were going to tell the Court.

6 That having been said, as I sat  
7 there, I am, as a member of the Bar, I am -- I  
8 do have obligations and certainly if I had  
9 thought that I heard something that was  
10 inconsistent with my understanding of the deal  
11 or omitted information that was obvious that  
12 should have been -- would make the description  
13 of what the judge heard -- and by "description  
14 of what the judge heard," I include everything  
15 that he heard Wednesday and everything that  
16 was in the Asset Purchase Agreement that he  
17 had heard before.

18 If I thought he was being misled, I  
19 obviously would have, as was Mr. Granfield who  
20 was my partner who I was sitting next to, we  
21 would have either, you know, addressed the  
22 Court directly or would have talked to Weil  
23 Gotshal and asked them to make appropriate  
24 other statements to the Court.

25 Q. As I understand the events and

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1 -Lewkow-  
2 discussions that Mr. Klein described to you,  
3 essentially because Lehman was unable to  
4 deliver certain assets within the  
5 contemplation of the Asset Purchase Agreement,  
6 other assets were substituted for them?

7 MR. MORAG: Objection to form.  
8 A. No. I totally -- that is not a  
9 correct characterization.

10 Q. What is the correct  
11 characterization?

12 A. What I testified.

13 Q. Is it your testimony that the two  
14 categories of assets you discussed, 15c3 and  
15 the contents of the box, were covered by the  
16 original language of the Asset Purchase  
17 Agreement?

18 A. I don't want to give you legal  
19 advice. But I will point you to the words of  
20 the Asset Purchase Agreement that basically  
21 says all assets used in the business, other  
22 than Excluded Assets, which is a defined term.

23 Q. At the time that you had the  
24 conversation with Mr. Klein and Ms. Fife, was  
25 it at that point still within the

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1 -Lewkow-

2 contemplation of the parties that the  
3 Clarification Letter would be submitted to the  
4 Court?

5 A. Well, we -- I don't -- the -- it  
6 had been the contemplation on Wednesday and  
7 Thursday, and the goal had been to, as I  
8 testified earlier, to give the Court, to  
9 give -- to have that ready to give the judge.  
10 It was also the intention at that stage to try  
11 to close Friday evening.

12 And on that sort of scenario, if,  
13 in fact, you were there, it would have been  
14 probably possible, one would have hoped to  
15 have had a Clarification Letter that one could  
16 have given to the Court.

17 It was clear to me, but I don't  
18 recall that given what had changed and given  
19 that there was a draft that had been served up  
20 while we were in court, that -- given that it  
21 showed up when it did, I was dubious even  
22 before I saw it and before I talked to my  
23 colleagues as to whether it did or didn't  
24 reflect those discussions given the timing of  
25 it.

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1 -Lewkow-

2 So to me, it was, it would have  
3 been shocking if before the Court could have  
4 approved it, whether we would have had a final  
5 Clarification Letter that we could have  
6 provided the Court.

7 Q. By the end of the sale hearing, no  
8 Clarification Letter had been finalized and  
9 everybody let to continue their work over the  
10 weekend. Was there a point during the weekend  
11 when there were conversations between Barclays  
12 on the one hand and Lehman on the other  
13 including their representatives, about  
14 bringing the Clarification Letter to the  
15 judge?

16 MR. MORAG: Objection to the form.

17 You can answer.

18 A. What I recall, and to me the  
19 Clarification Letter was -- it was getting  
20 close to being signed. I have a vague  
21 recollection, I do have a recollection of  
22 sitting in the room -- I did a lot of sitting  
23 in the rooms -- with a number of Weil Gotshal  
24 lawyers, including Harvey Miller, including  
25 one or more of his corporate colleagues in

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1 -Lewkow-

2 which -- and this would have been late Sunday  
3 night, early hours of Monday morning. I don't  
4 know. But it was very late, very late in the  
5 game. It might have even been Monday.

6 In fact, it might have been Monday  
7 morning, you know, 5:00, 6:00, 7:00, just  
8 shortly before we closed as I think about it.  
9 I don't know when it was. But it was late.  
10 It wasn't Saturday. It wasn't Sunday morning.  
11 It wasn't even Sunday afternoon. And we were  
12 very close to, you know, finish. The big  
13 issues that people were dealing with were DTC  
14 and J.P. Morgan and those sorts of issues were  
15 really the big issues that people were facing.

16 But very late in the process,  
17 Harvey Miller saying to a group of -- you  
18 know, again, I don't know how many other -- it  
19 was a very fluid group of people who would be  
20 sitting in what room at what time that  
21 weekend. But there were a number of other  
22 Weil people and Harvey Miller and me. I don't  
23 remember whether any of my colleagues were in  
24 the room with me.

25 And Harvey looked at the assembled

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1 -Lewkow-

2 group and said something like, Does anyone  
3 think that we have done anything inconsistent  
4 with what we've told the Court and have to  
5 bring this -- go back to court? Or something  
6 like that. I don't remember the words. I'm  
7 totally paraphrasing.

8 My recollection is, I've read  
9 Mr. Miller's deposition transcript, and he  
10 does not mention who -- he mentions a  
11 conversation which is, I think, more or less  
12 consistent with my recollection, but he  
13 doesn't mention that anyone from Cleary  
14 Gottlieb, like me, was there.

15 But -- and he may have had more  
16 than one, so I have no way of knowing if it's  
17 the same conversation.

18 But I do recall that. And he  
19 looked around the room and nobody said  
20 anything. It was mostly people on his side.  
21 So that's the one that -- you know, in  
22 connection with the finalization of the  
23 Clarification Letter, that conversation took  
24 place.

25 Q. Were any of your bankruptcy

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**-Lewkow-**  
**partners present during this conversation?**

A. I do not believe so.

**Q. Have you read any other depositions?**

A. Yes. I've read parts or all of Mr. Miller's deposition, Mr. Hughes deposition and Mr. Ridings' deposition. I believe that's all.

**Q. Did you read both days of Mr. Hughes deposition?**

A. Yes. Skimming, yes.

**Q. Did you review any briefs or pleadings to prepare for your deposition?**

A. No.

**Q. Have you read the Rule 60 filed by the debtor or the Trustee or the Creditors Committee?**

A. No.

**Q. Have you had them summarized for you?**

MR. HUME: Objection. I think that calls for privileged conversations.

DI MR. MORAG: Same objection. I instruct you not to answer.

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**-Lewkow-**

**Q. Was there a time, was there not, where it was contemplated that the Clarification Letter would be styled as an amendment to the APA, as a contractual amendment to the APA. Do you recall that?**

MR. MORAG: Objection to form.

A. Contemplated by whom?

MR. GAFFEY: Can I have this marked as 614A?

(Deposition Exhibit 614A, Letter from S&C, CGSH 00020701-20714, marked for identification, as of this date.)

**Q. You have before you, Mr. Lewkow, what we marked as Exhibit 614A, a document bearing Bates numbers CGSH 00020701 through 20714. Have you seen that document before?**

A. Yes.

**Q. I'm sorry. I didn't hear you.**

A. Yes.

**Q. Did you see it at or around the time that it's dated, September 19, 2009?**

A. I think that around that time, I either saw the cover letter, cover e-mail, or saw a cover e-mail from one of my colleagues

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**-Lewkow-**  
basically dismissing it.

**Q. Why was it dismissed?**

A. Because it was not consistent, best I can recall. This was sent by someone at Sullivan & Cromwell who had not been involved directly in any of the discussions with -- regarding the Clarification Letter. We didn't know where this had come from. Hold on a second. Wait a second.

(Witness reviewing document.)

A. I think. I think a couple of things. Shortly after this -- this came on, what date is this?

(Witness reviewing document.)

A. Friday? May I look at amendment No. 1?

**Q. Sure. Absolutely.**

A. That you had given me earlier.

**Q. That's Exhibit 27, right, for the record?**

A. 24.

**Q. I beg your pardon. 24. You're right.**

MR. HUME: Can I just interject?

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**-Lewkow-**

To the extent that the question that's pending, I think --

THE WITNESS: I'm not sure.

MR. HUME: -- is why was it dismissed, to the extent to answer that question requires you to divulge any privileged conversations within Cleary or Cleary and Barclays, I instruct you not to answer. Otherwise you can answer.

A. The answer is I'm not sure -- I've seen the e-mail from one of my colleagues, I think it was Dave Wyman. But it was also, and I don't know the precise timing. One of the elements that I see is, and maybe the key element, was this rider that Ms. Summers had sent with this e-mail to deal with what was called -- a new section called a holdback to deal with the DTC problem.

In fact, later that day, Sullivan & Cromwell did, in fact, prepare a First Amendment to the Asset Purchase Agreement to try to address based on what -- what people understood at the time were the -- were the

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1 -Lewkow-  
2 facts relating to the residential real estate  
3 mortgage securities which were later learned  
4 were not the facts.

5 And in fact, amendment No. 1 was  
6 signed.

7 **Q. The Asset Purchase Agreement --**

8 A. More accurately, first amendment  
9 was signed.

10 **Q. And the Asset Purchase Agreement**  
11 **and the first amendment of the Asset Purchase**  
12 **Agreement, both were submitted to Judge Peck**  
13 **at the sale hearing. Do you recall that?**

14 A. They were both described. I  
15 assume -- I know the Asset Purchase Agreement  
16 had been submitted in a technical sense,  
17 whether the first amendment was or not, I  
18 assume it was, but I don't know for a fact.

19 **Q. I'll go back to a question I asked**  
20 **you a few moments ago.**

21 **Given that the Clarification Letter**  
22 **recites that it amends the Asset Purchase**  
23 **Agreement, was one of the three verbs that we**  
24 **talked about, that it "amends" the Asset**  
25 **Purchase Agreement.**

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2 **When Mr. Miller asked whoever was**  
3 **assembled in that room as to whether anyone**  
4 **thought it was different than what had been**  
5 **described to the Court, was there any part of**  
6 **that discussion that noted that this was an**  
7 **amendment to the agreement that had been**  
8 **submitted to the judge?**

9 MR. MORAG: Objection to the form  
10 and to the characterization of his  
11 testimony regarding Mr. Miller's  
12 statement.

13 A. I don't recall. I would note that  
14 Mr. Miller couldn't have been more clear on  
15 Friday to the Court that there were major  
16 changes in the deal. And so the fact that in  
17 part this was to some extent an amendment of  
18 certain aspects of the Asset Purchase  
19 Agreement, I think it was entirely consistent  
20 with what Weil Gotshal told the Court on  
21 Friday.

22 And the Court carefully considered  
23 as I recall the comments made by I think a few  
24 of the creditors and/or the Committee or  
25 somebody, I don't remember who, arguing that

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2 **he should wait until he had the final document**  
3 **before he approved the sale. And he discussed**  
4 **that subject in his statements from the bench**  
5 **and concluded that he did not need to wait for**  
6 **a written document.**

7 **Q. Was it Cleary's understanding**  
8 **coming out of the sale hearing that there were**  
9 **any limitations on what could be included in**  
10 **the clarification agreement and still be**  
11 **within the terms of the Sale Order?**

12 MR. MORAG: Objection. I think  
13 that's work product and privilege.  
14 Cleary's understanding? He can't  
15 answer it.

16 MR. GAFFEY: What's the privilege?

17 MR. MORAG: The mental impressions  
18 of a lawyer of what they couldn't --

19 MR. GAFFEY: I just want you to  
20 identify the privilege.

21 MR. MORAG: I said work product and  
22 attorney/client privilege.

23 MR. GAFFEY: Okay.

24 MR. MORAG: To the extent they were  
25 discussed with attorneys.

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2 **Q. Do you recall any colloquy with the**  
3 **Court that you witnessed on Friday concerning**  
4 **any limitations placed on the Clarification**  
5 **Letter?**

6 A. No. None other than what I  
7 testified to earlier.

8 **Q. Do you recall any restrictions in**  
9 **the Sale Order itself placing restrictions on**  
10 **the Clarification Letter?**

11 MR. HUME: Same objection, I  
12 believe.

13 MR. MORAG: I think --

14 MR. HUME: It calls for a legal  
15 interpretation of the Sale Order. That  
16 is a matter in the litigation and  
17 you're asking a lawyer how to interpret  
18 it for you. So I think it's asking for  
19 work product.

20 **Q. Were there any discussions between**  
21 **Barclays on the one hand including its**  
22 **representatives, and Lehman on the other**  
23 **including its representatives, as to whether**  
24 **there were any limitations in the sale order**  
25 **as to what could be included in the**

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2 **Clarification Letter?**

3 A. Yes. Two conversations. One I  
4 testified to already, the late Sunday night or  
5 late Monday morning conversation with  
6 Mr. Miller. Earlier, I believe it was Sunday,  
7 it was a crazy weekend, I believe it was  
8 Sunday, there was a conversation in the  
9 hallway where the subject of whether certain  
10 circumstances, if we did certain things, would  
11 lead to a change of -- that would require  
12 going back to the Court.

13 **Q. Can you --**

14 A. I may have mischaracterized that.  
15 Go ahead. Ask your next question.

16 **Q. Okay. My obvious question is: How**  
17 **did you mischaracterize it?**

18 **But tell me what you remember about**  
19 **that conversation. Who said what to who?**

20 A. So, as I testified earlier on  
21 Friday, one of the things that Lehman Brothers  
22 and Barclays had discovered that among the  
23 Purchased Assets that Barclays was going to  
24 receive in the -- pursuant to its purchase of  
25 substantially all of the assets used in the

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2 business, other than Excluded Assets, that  
3 although there had been very substantial  
4 reductions in what Lehman could deliver, they  
5 also had realized and ascertained that there  
6 were assets that were part of their assets  
7 used in the business that had not previously  
8 been sort of focused on specifically by the  
9 parties, although they were assets of Lehman  
10 used in the business.

11 And I mentioned two -- two  
12 categories of such assets. One was the  
13 so-called 15c3-3 account. And I think I  
14 testified -- I'm not sure, it's been a long  
15 day so far. Maybe not. I may not have  
16 mentioned this. But one of things that  
17 Michael Klein had reported in describing that  
18 was that he had been told by someone on behalf  
19 of Lehman that there was some e-mail around in  
20 which the -- pursuant to which referencing  
21 that someone in the division of market  
22 regulation at the SEC had confirmed that the  
23 15c3-3, the assets in the 15c3-3 could, in  
24 fact, be transferred by Lehman and at some  
25 point, I believe Saturday morning or at some

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2 point Saturday, we asked Weil to see that  
3 agreement.

4 At some later point, I believe on  
5 Sunday, but I couldn't swear to it at this  
6 stage -- at some point, as I was walking in  
7 the hallway of Weil Gotshal, we were in  
8 meetings spread out over a large portion of  
9 Weil Gotshal that was full of purely -- I  
10 believe purely a conference space. There were  
11 lots of meetings going on by different people.  
12 There were people working on the Transition  
13 Services Agreement, there were people dealing  
14 with DTC, there were people just getting ready  
15 to do a closing. Because all of the work had  
16 to be done to be prepared to close, even while  
17 other work was going on. Discussions with  
18 JPMorgan Chase.

19 Anyway, we were with Weil Gotshal  
20 on that floor. And as I was walking down the  
21 floor, there were a number of the Weil  
22 partners standing at this big desk which I  
23 assume was the reception desk, although it  
24 wasn't near the elevators where there was a  
25 big reception desk. But I don't know. It

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2 wasn't clear. Maybe it was for if you needed  
3 secretaries during the conference room. I  
4 don't remember what it was since I had never  
5 been there during a working day, only on  
6 weekend.

7 But standing around this desk were  
8 a number of Weil lawyers. There may have well  
9 been somebody from Lehman or Lazard there as  
10 well, I don't recall. I believe Harvey Miller  
11 was one of the people among the group that was  
12 there for Weil, and they said we have -- you  
13 asked for and we now have, it gave me the  
14 impression they had just received it in the,  
15 you know, minutes or the last hour or two, and  
16 certainly not before then was the impression.  
17 I'm not sure whether they said that or not.  
18 That we now have the e-mail relating to the  
19 15c3-3 account. And they showed it to me.  
20 And I looked at it.

21 And they said that -- first  
22 thing -- well, I noticed and commented on, I  
23 believe I commented on, that it was not as I  
24 had thought from the SEC but merely an  
25 internal Lehman e-mail referencing a

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2 conversation with the SEC, with someone on  
3 staff of the SEC.

4 And somebody from Lehman, somebody,  
5 I'm sorry, from Weil said -- and it may have  
6 been Mr. Miller but I don't know. But  
7 somebody from Weil said something like, We  
8 didn't realize that some -- that the account  
9 was not entirely securities but included a  
10 bank account that -- with cash. It was a  
11 major bank. It was one of the things on that  
12 e-mail. So it was -- and as I recall, it was  
13 a million dollars in the bank account that  
14 Lehman maintained with a third party bank.  
15 And 700-plus, 760 odd million of securities  
16 were in that account.

17 And in the course of that, one of  
18 the Lehman people, again, I believe it was  
19 Mr. Miller, but I'm not sure, said, the  
20 question is, does anyone remember exactly what  
21 Ms. Fife -- I don't think Ms. Fife was there  
22 at the time -- told the Court, when she was  
23 discussing the fact that you retain the cash  
24 provision in the Asset Purchase Agreement was  
25 being eliminated, did she say anything that

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2 would be inconsistent with us transferring as  
3 part of all the assets of the business, the  
4 15c3-3 account which we now know includes a  
5 bank account.

6 There then followed some further  
7 discussions on a number of -- let me just go  
8 through them.

9 MR. MORAG: If you like.

10 A. Go ahead, ask another question.

11 Q. Tell me about the further  
12 discussions.

13 A. So -- and I don't remember in  
14 quite -- again, this was a weekend that was  
15 very -- at the end of the week that had been a  
16 very complex and difficult and weak -- not  
17 just from the financial markets but from  
18 everyone on both sides of this deal who were  
19 trying to see if this deal could get done. So  
20 I don't remember how quickly it got done,  
21 whether it was dragged out over two hours or  
22 only over half an hour.

23 But there were some follow-up  
24 conversations and one of the things -- it may  
25 have even dragged on longer than two hours.

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2 Because one of things we asked, or someone  
3 asked is -- I don't know who asked it. Is it  
4 possible, can we get a transcript, can we find  
5 out exactly what Ms. Fife said to the Court to  
6 see whether or not she said something that  
7 would be or might appear to be inconsistent  
8 now that we knew that the 15c3-3 account  
9 included a bank account.

10 All of this is paraphrase. I do  
11 not remember precisely. All of my testimony  
12 where I say what people say is paraphrase. I  
13 don't recall specific words.

14 So some time clearly passed while  
15 that -- but I don't remember how long, while  
16 people investigated that issue. And we were  
17 told at some point -- again, I don't know by  
18 whom -- that it would not be possible to get a  
19 transcript, that no transcript had been  
20 prepared, and that in effect the -- there had  
21 not been a court reporter, shockingly, but it  
22 had been -- there was a tape of the Court  
23 hearing, and that tape, we learned, was locked  
24 up in the courtroom. This was Sunday. I'm  
25 sure it was Sunday. That tape was locked up

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2 in the courtroom, in the courthouse, there was  
3 no way to get access to it, and so there would  
4 be no way to obtain a transcript.

5 There was some further discussion;  
6 at different points different people joined  
7 the discussion. Still in the hallway. All of  
8 this took place in the hallway. It may have  
9 been a return to the hallway, but it again  
10 happened in the hallway.

11 And among those who joined the  
12 discussion, and there was more -- in fact, the  
13 original discussion there may have been four  
14 or five or six people, by then there were 10  
15 or 12 people. And included in the further  
16 discussions were from the Barclays side, both  
17 Michael Klein, I believe Archie Cox, I'm not  
18 hundred percent sure and my partner Ed Rosen.

19 By then -- by some -- you know, was  
20 it a second conversation or a third  
21 conversation? I cannot recall. But at some  
22 point we had -- "we" being the Barclays side  
23 talked about --

24 Q. You shouldn't tell me about that  
25 conversation.

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<p>1                   <b>-Lewkow-</b></p> <p>2           A. I'm trying to figure out --</p> <p>3           MR. MORAG: There was a</p> <p>4           communication.</p> <p>5           A. There was a communication about</p> <p>6           what we had heard from Harvey Miller and/or</p> <p>7           others from Weil Gotshal that I described in</p> <p>8           my testimony, and that was discussed.</p> <p>9           And putting aside the conversation</p> <p>10          that I had with the Barclays representatives,</p> <p>11          when we got back and the discussion that I'm</p> <p>12          testifying to resumed with the other side, we</p> <p>13          said, look, if there's no transcript, nobody</p> <p>14          remembers precisely what he said.</p> <p>15          And so until we can get a</p> <p>16          transcript -- because she clearly had talked</p> <p>17          about cash and there was, you know -- the</p> <p>18          retained amount was not, was sort of cash that</p> <p>19          was free and available and not tied up in</p> <p>20          positions. It was just cash that we had been</p> <p>21          led to believe at the time of the Asset</p> <p>22          Purchase Agreement was totally free cash that</p> <p>23          they had somewhere, and that they were going</p> <p>24          to transfer as part of the Purchased Assets.</p> <p>25          And nobody knew precisely how</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1                   <b>-Lewkow-</b></p> <p>2           Ms. Fife had, in describing the changes from</p> <p>3           the deal as reflected in the Asset Purchase</p> <p>4           Agreement, how precisely she had put it in</p> <p>5           describing those changes. And she had clearly</p> <p>6           indicated that that cash wasn't in -- wasn't</p> <p>7           going to be in the deal but again, nobody knew</p> <p>8           precisely what it was.</p> <p>9           And so the alternative, since</p> <p>10          nobody wanted to -- neither Weil Gotshal nor</p> <p>11          Lehman nor Barclays nor the lawyers wanted to</p> <p>12          do anything inconsistent with what the Court</p> <p>13          had been told, there were two choices</p> <p>14          available, which was to wait until Monday, get</p> <p>15          a transcript and see what, in fact, she had</p> <p>16          been told. And then, if necessary, go back to</p> <p>17          the Court.</p> <p>18          There were three choices. Just go</p> <p>19          back to the Court Monday morning or find</p> <p>20          another solution. And the other solution was</p> <p>21          the one that Barclays put on the table of</p> <p>22          saying, okay, we will take just the securities</p> <p>23          portion, 760-some-odd million in securities.</p> <p>24          And in the course of that discussion, Michael</p> <p>25          Klein said that if -- if for some reason you</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1                   <b>-Lewkow-</b></p> <p>2           can't --</p> <p>3           And there was some conversation by</p> <p>4           someone at Weil about do we -- do we need SEC</p> <p>5           approval. And Ed Rosen said no. And they</p> <p>6           said well -- they wanted to add language that</p> <p>7           we had no problem with, something saying</p> <p>8           "subject to applicable law," or something to</p> <p>9           that nature that ended up in the Clarification</p> <p>10          Letter.</p> <p>11          And then Klein said, Look, if we --</p> <p>12          you know, we're giving up this billion dollars</p> <p>13          that we thought we were getting as of Friday</p> <p>14          afternoon and we want to make sure we're</p> <p>15          getting this 769 million in securities, and so</p> <p>16          we want to add language that says -- again,</p> <p>17          I'm paraphrasing, that if we can't get that,</p> <p>18          you'll get us 769 million of securities of</p> <p>19          some other securities. That is my</p> <p>20          recollection.</p> <p>21          <b>Q. By the time of the conversation</b></p> <p>22          <b>with Mr. Miller on either Sunday night or</b></p> <p>23          <b>Monday morning concerning whether anyone</b></p> <p>24          <b>thought there were any aspects of the</b></p> <p>25          <b>Clarification Letter that required going back</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1                   <b>-Lewkow-</b></p> <p>2           <b>to the Court, had anybody seen a transcript by</b></p> <p>3           <b>then?</b></p> <p>4           A. No.</p> <p>5           <b>Q. Had anybody heard the tape by then?</b></p> <p>6           A. No.</p> <p>7           <b>Q. Was there any discussion on Monday</b></p> <p>8           <b>before the closing concluded of getting the</b></p> <p>9           <b>transcript or the tape to make sure the</b></p> <p>10          <b>Clarification Letter was consistent with the</b></p> <p>11          <b>Court's limitations or instructions?</b></p> <p>12          MR. MORAG: Object to the form.</p> <p>13          A. There was no -- to my recollection,</p> <p>14          there was no discussion of that. There was a</p> <p>15          belief by all of the people that's discussed</p> <p>16          that it was really important to get this deal</p> <p>17          closed and announced before the market opened</p> <p>18          Monday morning. There was -- the market --</p> <p>19          there had been press announcements that came</p> <p>20          out after midnight Friday night that had been,</p> <p>21          I believe, in the Saturday papers or Sunday</p> <p>22          papers or both, that the Court had approved</p> <p>23          the sale.</p> <p>24          And both Lehman and Barclays</p> <p>25          believed it was really important both from the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>



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financial markets perspective and from the perspective of Barclays of keeping the Lehman employees -- and I want to come back to the Lehman employees in a second -- comfortable, that they should hang around and that there really was a deal. That there had been a real hope -- you know, there had been -- I think some of the press reports might have picked up the concept from this.

I'm not sure of this, but I believe at least some of the press reports from people who had been in the courtroom had indicated that the deal might close over the weekend or would -- was expected to close over the weekend.

And so there was great concern that if, in fact, the markets opened Monday morning and we had not announced a sale, that people would have thought the deal was falling apart or had fallen apart, was never going to happen, or what the heck is the problem out there. And in the markets that we lived in, this was in the course of the days when the papers were full of information talking about

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whether Morgan Stanley will go under? Will Goldman Sachs go under? Will we be in a Great Depression? That was the context in which this conversation took place.

And there was a belief, as I said, that the employees -- that this would be a major problem if we didn't announce the deal that we had closed by Monday morning before the market opened.

I mentioned the employees. The employees were very important to this deal. Barclays was not -- you know, all of this discussion we've had and this testimony has been -- and I understand that, has been about the financial assets. Barclays was not doing this deal to buy a portfolio of financial assets. Barclays was doing this deal because it wanted to buy a broker-dealer investment banking business in the United States and was prepared to take very substantial risks in their view in doing that.

And I say "very substantial risks" not focusing particularly on the financial assets but because of the fact that when

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people have bought investment banking firms in the United States, they have often worked out very badly.

Because it is not only what you pay day one but it's can you make it work? Can you get the employees to stay? Can you get them integrated? Can you keep them happy so as to create value for your shareholders? And that's true in the best of days.

And I think of General Electric, pretty savvy acquirers as people would think. They had bought Kidder Peabody, spent a great deal of money and then spent a lot more money over the next X years trying to make it work and had lost a zillion bucks. A zillion is -- I don't know. But they lost a lot of money. And not just the money they invested but the money they later put in to try to make it work.

And that's what Barclays was committing itself to do. So the reaction of the employees and keeping the employees, in particular the key employees comfortable that they assumed -- and I think rightfully so, and

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they may have known it as a fact, I don't know, but they assumed that really the Barclays -- the best Barclays [sic] people, the ones you most wanted to keep were getting other inquiries from competitors during the the days, during Monday, during the prior week over that weekend, etcetera, and it was important that we keep -- that Barclays be able to keep the people together.

All of that went to the point that the parties believed, both parties, that it was really important to try to get this deal announced before the beginning of the market opening on Monday morning.

**Q. Was the concern about announcing the closing of the deal before the opening of the market on Monday morning, a factor in the decision of the group as to whether or not to bring the Clarification Letter back to the judge?**

A. No.

MR. MORAG: Object to the form.

A. The question was, the Court had approved the the Sale Order without the

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Clarification Letter. He knew he didn't have the Clarification Letter.

So the only question that I believed that Mr. -- the reason Mr. Miller asked the question, I believe as I described, was, Okay, what we're doing -- what we are doing here in the Clarification Letter, is it -- are we being consistent with what the Court had approved? Which turned on what the Court had heard, and heard again on Wednesday, on Friday in -- in the Asset Purchase Agreement and the other information that the Court had, and were we doing anything that was inconsistent with that.

And this was why the question -- so, the question was, the Court clearly knew that he didn't have to see the Clarification Letter. The question is had something happened that was inconsistent with what he had been told that would change that plan. He expected us to close over the weekend. That was what was talked about on Friday.

So the only reason we would have to go back is if something had changed that made

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it not be -- made a change that was inconsistent with what he had been told. It was for that reason in the prior conversation that there was uncertainty because we weren't sure what he had said about that to the extent it might or might not affect the ability to deliver the cash in that bank account that I mentioned that was part of the assets of the 15c3-3 account, that since we weren't sure on that issue, that would have raised the problem that I testified about.

But that was the only time that there was any discussion of going back. And even there, the concept was, how do we -- Barclays gave up in its mind a billion dollars because it was important to get the deal closed on Monday morning.

MR. GAFFEY: I don't have anything further.

Thanks. Thanks for your time, Mr. Lewkow.

THE WITNESS: Can we take a break? (Whereupon, a recess was taken from 2:41 p.m. to 2:52 p.m. )

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EXAMINATION BY  
MR. MAGUIRE:

**Q. Mr. Lewkow, as you know, my name is Bill Maguire, I represent the SIPA Trustee. Before we start with questions, your counsel is going to put on the record the topics you have been designated as representative today.**

MR. MORAG: As I think we confirmed to you separately, Mr. Lewkow and Mr. Rosen together are responding to the 30(b)(6) deposition notice served on Cleary Gottlieb and they have separately been subpoenaed for their own personal deposition, which you now have agreed to complete Mr. Lewkow's personal deposition along with his share of the 30(b)(6).

With respect to 30(b)(6), the easiest way for me to explain it is that Mr. Rosen is addressing issues relating to the DTC, OCC, and the terms of the Clarification Letter relating to exchange-traded derivatives.

To the extent there may be overlap

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-Lewkow-

with respect to the 15c3-3 issue, then they're both designated.

I think you know from the declaration, Mr. Rosen is a market regulation person and Vic is the mergers and acquisition.

That may not be the precise answer, but if you have any question, you should certainly ask them of Mr. Lewkow. If it's Ed, he will tell you.

MR. MAGUIRE: Thank you.

BY MR. MAGUIRE:

**Q. Sir, you have seen in the course of today a number of drafts of the deal document, many of them with the black lining or red lining convention.**

**What was the practice in terms of the Cleary team dealing with the Weil team and the other parties in the course of negotiating first the APA and then exchanging drafts in connection with the Clarification Letter?**

MR. MORAG: Objection to form.

Vague as to "practice".

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1 -Lewkow-

2 protection that the rule is aimed at doing.

3 I don't know if I would use the  
4 word you used, but I recognized that there  
5 were regulatory implications about the ability  
6 to take the money out that were tied to the  
7 accounts of the customers who were being  
8 directly or indirectly -- I'm not sure the  
9 details of how it works -- to provide some  
10 level of effort to the customers and clients.

11 **Q. Was there a discussion of the**  
12 **regulatory constraints on Lehman in releasing**  
13 **funds from its c3 account?**

14 A. As I testified this morning, I  
15 believe that when the discussion took place,  
16 somebody from Weil -- none of the Weil people  
17 were experts at all on 15c3-3 accounts as they  
18 all said at the time. One of them made that  
19 point. And on our side, we did have someone  
20 who did have real expertise, Ed Rosen, who was  
21 participating at least by the latter stages in  
22 discussions. So somebody from Weil had raised  
23 the question of, "Gee, as far as we at Weil  
24 know, maybe we need approval from the SEC to  
25 do this. And Rosen said, "You don't need

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1 -Lewkow-

2 approval to do it, there is no approval  
3 requirement."

4 And they said, "Well, this is an  
5 account that we gather -- you know, we know is  
6 required as a regulatory matter. Let's at  
7 least say --" they may have proposed saying,  
8 you know, "subject to SEC approval," I don't  
9 remember if they used those words.

10 And Ed said, "No, that's wrong  
11 because there is no need for SEC approval."

12 And they said, "Can we say something like  
13 'subject to applicable law'?" Or something  
14 like that. And since we tried to comply with  
15 the SEC laws and rules, Ed did not object to  
16 that, and language to that effect went into  
17 the document.

18 **Q. Did anyone explain that only an**  
19 **amount in excess of a c3 calculation is**  
20 **permitted to be removed from such a restricted**  
21 **account?**

22 MR. MORAG: Objection to form.

23 Answer with respect to anything you  
24 were told from the Lehman side.

25 A. I believe that 15 -- as I

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2 understood 15c3-3 with total non-expertise, it  
3 is a requirement that you maintain certain  
4 reserves in a segregated account to protect  
5 the interest of customers. And I don't  
6 recall -- I was aware certainly that basically  
7 Barclays was assuming the accounts. So I'm  
8 not sure whether there was a difference  
9 between an excess and a non-excess given that  
10 I don't think Lehman, as a broker-dealer, was  
11 going to continue to have customer accounts.  
12 But that's all I can say on that subject.

13 **Q. In that hallway conversation,**  
14 **Mr. Rosen did not say that only the excess**  
15 **could be transferred?**

16 MR. MORAG: Is that a question?

17 MR. MAGUIRE: Yes.

18 A. I don't remember the word "excess."  
19 You'll have to ask Mr. Rosen.

20 **Q. Did Mr. Rosen say anything about a**  
21 **deficiency in the c3 account?**

22 A. There was no discussion of  
23 deficiency of the c3 account. Lehman Brothers  
24 on Friday -- I was told that Lehman Brothers  
25 on Friday had identified this account as

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1 -Lewkow-

2 assets that consistent with the Asset Purchase  
3 Agreement that required the delivery of all  
4 assets used in the business other than  
5 specifically excluded assets. But they  
6 identified this account for the first time on  
7 Friday as assets that were Lehman, that Lehman  
8 could deliver to Barclays as the purchaser.  
9 And therefore, certainly no one had a  
10 discussion of the deficiency.

11 **Q. Did anyone have any discussion**  
12 **about a shortfall in customer property?**

13 A. I don't know what you mean by  
14 "shortfall" as opposed to "deficiency." To me  
15 it sounds the same. I don't -- no.

16 **Q. Did anyone discuss where Lehman**  
17 **would get the property to pay Barclays if it**  
18 **was unable, could not get approval, to remove**  
19 **the funds from the c3 account?**

20 A. I think --

21 MR. MORAG: Object to the form of  
22 the question, to the word "funds." I  
23 think there has been testimony what was  
24 agreed to be transferred was  
25 securities.

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<p>1 -Lewkow-</p> <p>2 A. As I testified earlier, in the</p> <p>3 course of this discussion, Mr. Klein said in</p> <p>4 words or in substance that, okay, we will take</p> <p>5 the billion dollars that are sitting in a bank</p> <p>6 in cash, deposited with the bank but we want</p> <p>7 to get the 760-odd million. And if you can't</p> <p>8 get it there, we want to get it some other</p> <p>9 way. And that's my recollection of the</p> <p>10 discussion.</p> <p>11 <b>Q. In the middle of Paragraph 20 of</b></p> <p>12 <b>your Declaration, page 10, after you referred</b></p> <p>13 <b>to Mr. Klein, you say, "This was agreed to by</b></p> <p>14 <b>representatives of Lehman." Do you see that?</b></p> <p>15 A. Yes.</p> <p>16 <b>Q. What do you mean by "this"?</b></p> <p>17 A. That if the lead -- if there were</p> <p>18 legal constraints preventing transfer of the</p> <p>19 rule 15c3-3 account assets, Barclays would</p> <p>20 receive substitute assets.</p> <p>21 <b>Q. And who were the Lehman</b></p> <p>22 <b>representatives who agreed to that?</b></p> <p>23 A. At a minimum, it included the Weil</p> <p>24 group that was standing there. I don't know</p> <p>25 what authority they had. As I said, this took</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 place over a couple of conversations, I think.</p> <p>3 At a minimum, it included them.</p> <p>4 I actually believed that somebody</p> <p>5 from Lehman may have been with them during</p> <p>6 this discussion, but I don't have a distinct</p> <p>7 recollection of that. As I said, the group</p> <p>8 had gotten larger during the course of these</p> <p>9 two or three hallway conversations. But I --</p> <p>10 you know, certainly I leave it to Weil</p> <p>11 Gotshal.</p> <p>12 You know, I have enormous respect</p> <p>13 for Mr. Miller and Mr. Roberts and Ms. Fife</p> <p>14 and the other lawyers, and Mr. Masaneo, and</p> <p>15 the other lawyers who were there doing their</p> <p>16 best to represent their clients. They know</p> <p>17 what things they need to go back to and not go</p> <p>18 back to.</p> <p>19 So if there was no one from Lehman</p> <p>20 Brothers there -- I just don't recall if</p> <p>21 someone from Lehman was there at that moment</p> <p>22 or not. But Lehman -- Lehman's counsel -- and</p> <p>23 there may have been somebody from Simpson</p> <p>24 Thacher there as well. May well have been.</p> <p>25 Lehman's counsel agreed to it. And</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 204	Page 205
<p>1 -Lewkow-</p> <p>2 then it went -- later in the day it got into a</p> <p>3 draft. So certainly -- I don't know what</p> <p>4 kind -- if Lehman people were not present at</p> <p>5 that moment, I assume Weil either had</p> <p>6 authority or obtained authority to include</p> <p>7 that in. But you'll have to ask them.</p> <p>8 <b>Q. How did Mr. Miller signify his</b></p> <p>9 <b>agreement to this?</b></p> <p>10 A. He said -- somebody from Weil said,</p> <p>11 okay, or yes, or that's not a problem. I</p> <p>12 don't know what words he used.</p> <p>13 <b>Q. Who was the person from Weil who</b></p> <p>14 <b>said one of those variety of comments?</b></p> <p>15 A. I don't -- I don't remember.</p> <p>16 <b>Q. And did you understand that person</b></p> <p>17 <b>from Weil to be agreeing that Barclays would</b></p> <p>18 <b>get \$769 million unconditionally as part of</b></p> <p>19 <b>the sale as opposed to simply agreeing to the</b></p> <p>20 <b>inclusion of the language proposed "to the</b></p> <p>21 <b>extent permitted by applicable law"?</b></p> <p>22 A. No, I think the phrase -- my</p> <p>23 understanding at the time and I think what we</p> <p>24 were all talking about was my understanding</p> <p>25 was the reason "to the extent permitted by</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 applicable law" or words of that nature were</p> <p>3 going to get added to the language was because</p> <p>4 of the technical rules governing 15c3-3 that</p> <p>5 the Weil lawyers had conceded they were not</p> <p>6 experts on.</p> <p>7 I had absolutely no expectation,</p> <p>8 and it was never suggested, to my</p> <p>9 recollection, that the limitation "to the</p> <p>10 extent permitted by applicable law" was a</p> <p>11 limitation on the broader statement: if we</p> <p>12 can't transfer that, we will transfer</p> <p>13 something else. That was not my</p> <p>14 understanding.</p> <p>15 <b>Q. Did you do anything to confirm your</b></p> <p>16 <b>understanding that when Weil, somebody at Weil</b></p> <p>17 <b>said "okay" or "yes", they were agreeing to</b></p> <p>18 <b>make this obligation unconditional as opposed</b></p> <p>19 <b>to simply agreeing to the inclusion of the</b></p> <p>20 <b>language proposed "to the extent permitted by</b></p> <p>21 <b>applicable law"?</b></p> <p>22 A. The language was drafted to reflect</p> <p>23 the conversation that took place in the</p> <p>24 hallway and was included in the Clarification</p> <p>25 Letter. I believe there is nothing else to</p> <p>TSG Reporting - Worldwide 877-702-9580</p>



-Lewkow-

say. People agreed to a principle, it got reflected in the Clarification Letter.

**Q. A couple of lines down in your Declaration, you refer to some other language, it's the phrase you referred to "are securities of substantially the same nature and value." Do you see that?**

A. Yes.

**Q. Who proposed that language?**

A. I described the agreement, the oral agreement that was reached in the hallway. It was then left to the folks focusing on pushing the paper forward on the Clarification Letter, which included both Cleary folks and Weil folks and there were others involved, or at least in the room at some time during that conversation.

And I believe that somebody did a first version of it that referred to -- of the same nature and didn't include "and value." And then someone on the Barclays' team said, "Well, that doesn't work because that wouldn't -- what does that mean?" So the words "and value" got put in.

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-Lewkow-

**Q. Did anyone at Barclays go back and ask anyone at Weil what that meant?**

A. What what meant, sorry?

**Q. The words "are securities of substantially the same nature"; what was meant by that language?**

A. With all due respect, when people are trying to write a document and trying to get a deal done under incredibly difficult circumstances and somebody writes a language that on its face does not work to solve the problem that had been discussed and agreed to on all matters by people to solve a problem, and it was obvious that to say "the same nature" could mean one dollar worth of securities, that would have been an idiotic remark.

We had no reason to believe that Weil was trying to sabotage the deal that their colleagues had agreed to. And so to my understanding, someone said, "You got to add the word 'and value'," and they said "Of course," and it happened.

**Q. From whom did you get that**

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-Lewkow-

**understanding?**

A. From my colleagues, Mr. Davis, Mr. McLaughlin and Mr. Leinwand and one or more of that group.

MR. HUME: Can we take a short break?

THE WITNESS: Yes, I can use a bathroom break. Thank you.

(Whereupon, a recess was taken from 3:58 p.m. to 4:24 p.m.)

BY MR. MAGUIRE:

**Q. Sir, over the course of the weekend prior to closing, did you participate in any meetings with the Creditors Committee?**

A. No. Let me add to that. That isn't to say that one or more members of the Creditors Committee may have been present when meetings took place. But I certainly did not have any -- to my knowledge, any particular meetings with the Creditors Committee.

**Q. Let me show you a document that's previously been marked as Exhibit 451.**

A. I got it.

**Q. Do you recognize that document,**

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-Lewkow-

**sir?**

A. Yes.

**Q. What is it?**

A. This looks like, and this is the document, I'm quite sure, that I was shown and you asked me about before. This is the letter -- the internal Lehman Brothers' e-mail that I was shown that Sunday by Weil Gotshal with respect to the 15c3-3 reserve account.

**Q. And you mentioned that a bank had a billion dollars of cash. Are you referring to the cash with Wells Fargo?**

A. Yes. On deposit with Wells Fargo.

**Q. So you understand this was, taking the billion dollars in cash out of the transaction left \$769 million in qualified securities?**

A. Yes.

**Q. And that was in the subject of the provision that was put in the Clarification Letter?**

A. Yes.

**Q. You'll see the reference here to Mike Macchiaroli?**

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1 -Lewkow-  
2 recall anyone suggesting that.  
3 MR. HUME: Do you want to take a  
4 short break?

5 MR. MAGUIRE: Sure.  
6 (Whereupon, a recess was taken  
7 from 4:50 p.m. to 5:01 p.m.)

8 MR. MAGUIRE: Sir, I have no  
9 further questions, thank you.

10 EXAMINATION BY  
11 MR. HUME:

12 Q. Mr. Lewkow, I'm Hamish Hume and I'm  
13 here representing Barclays, as you know. I  
14 just wanted to make sure one thing on the  
15 record is clear.

16 On page 197 of the rough transcript  
17 we are looking at, you were asked a question  
18 by counsel for the Trustee. This was  
19 referring to the conversation you testified to  
20 with Weil Gotshal about the \$769 million in  
21 securities.

22 The question was: "And did you  
23 understand that person from Weil to be  
24 agreeing that Barclays would get \$769 million  
25 unconditionally as part of the sale as opposed

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1 -Lewkow-  
2 to simply agreeing to the inclusion of the  
3 language proposed 'to the extent permitted by  
4 applicable law'?"

5 Your answer was "No," and then you  
6 went on with an explanation.

7 Let me just make sure the record is  
8 clear in terms of the "yes" and the "no" of  
9 that question.

10 Was it your understanding from your  
11 conversation with Weil Gotshal that you  
12 referenced relating to the \$769 million in  
13 securities, that Barclays did have an  
14 unconditional right to receive those assets?

15 A. Yes. The question, with all due  
16 respect, was ambiguous, because I was offered  
17 a choice, was I agreeing -- was the Lehman  
18 person agreeing unconditionally to pay or  
19 agreeing -- "simply agreeing," was your term,  
20 to the inclusion of language "to the extent  
21 permitted by applicable law." That was a  
22 choice. And I started with "no." My "no" was  
23 addressed to the end of your question, that it  
24 was not merely "to the extent permitted by  
25 applicable law."

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1 -Lewkow-  
2 It was, as I explained in the rest  
3 of my answer, the discussion of "the  
4 applicable law," as I understood what the  
5 individual was saying on behalf of Lehman, was  
6 merely to 15c3-3 and not to the concept that  
7 if that were not payable, there would be an  
8 unconditional obligation to deliver the  
9 securities some other way.

10 MR. HUME: I have no other  
11 questions.

12 MR. MAGUIRE: Nothing further.  
13 (Time noted: 5:05 p.m.)

14  
15  
16  
17 VICTOR I. LEWKOW

18  
19  
20  
21 Subscribed and sworn to before me,  
22 this \_\_\_\_ day \_\_\_\_\_ of 2010.

23  
24  
25 Notary Public

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1 -----I N D E X-----  
2 WITNESS EXAMINATION BY PAGE  
3 V. LEWKOW MR. GAFFEY 5  
4 MR. MAGUIRE 160  
5 MR. HUME 226  
6

7 DIRECTIONS: PAGE 79, 134, 185  
8 MOTIONS: [None]  
9 REQUEST: [None]

10 -----EXHIBITS-----  
11  
12 EXHIBIT FOR I.D.  
13 Exhibit 613A 6  
14 Declaration of Victor Lewkow

15  
16 Exhibit 614A 135  
17 Letter from S&C, CGSH  
18 00020701-20714

19  
20 Exhibit, 615A 195  
21 2PP 9/18/08 e-mail from J.  
22 Potenciano to distribution re:  
23 Preliminary 15c3-3 reserve lock-up  
24 as of 9/17/08  
25

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1  
2 UNITED STATES BANKRUPTCY COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS Case No. 08-13555(JMP)  
8 HOLDINGS, INC., et al, (Jointly Administered)  
9 Debtors.

10 -----x

11  
12 DEPOSITION OF EDWARD J. ROSEN

13 New York, New York

14 February 19, 2010

15  
16 Reported by:

17 MARY F. BOWMAN, RPR, CRR

18 JOB NO. 28461  
19  
20  
21  
22  
23  
24  
25

1 ROSEN  
2 (Exhibit 622, declaration of Edward J.  
3 Rosen marked for identification, as of this  
4 date.)  
5 EDWARD J. ROSEN,  
6 called as a witness by the parties,  
7 having been duly sworn, testified as follows:  
8 EXAMINATION BY  
9 MR. MAGUIRE:  
10 Q. As you know, my name is Bill Maguire  
11 with Hughes, Hubbard & Reed. I am here with my  
12 colleague Amina Hassan. We represent James  
13 Giddens, the SIPA trustee.  
14 We are going to ask you some  
15 questions. If any questions are unclear, let me  
16 know. If you need to take a break at any time,  
17 just let me know.  
18 I will show you a document we have  
19 marked as Exhibit 622. If you can tell me what  
20 that document is, sir.  
21 A. It looks like my declaration, pursuant  
22 to Rule 30(b)(6).  
23 Q. You have mentioned in the second  
24 paragraph that you specialize in derivatives.  
25 Do you see that?  
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1 ROSEN  
2 A. I'm not sure I understand the  
3 question, what type of futures options.  
4 Q. Were they exchange-traded or over the  
5 counter?  
6 A. Yes, yes, listed. Not over the  
7 counter. My understanding was the  
8 over-the-counter business was excluded.  
9 Q. Did you have an understanding how  
10 Lehman organized its derivatives business?  
11 A. No.  
12 Q. When did you become involved in the  
13 transaction?  
14 A. My recollection was sometime around  
15 the 15th of September, maybe the 14th of  
16 September.  
17 Q. And what was your role?  
18 MR. MORAG: Time frame? At the start?  
19 Q. Starting on the 15th.  
20 A. On the 15th, going forward, I was both  
21 dealing with certain of the deal issues relating  
22 to the regulated character of the transaction,  
23 and also dealing with certain regulators on  
24 issues that needed to be addressed if the deal  
25 was going to be closed.  
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1 ROSEN  
2 A. Yes.  
3 Q. Can you tell me what -- the  
4 derivatives that Barclays acquired in the  
5 transaction that's the subject of this, did that  
6 include any futures contracts?  
7 MR. MORAG: Object to the form.  
8 A. It did, it did include the acquisition  
9 of the futures business.  
10 Q. And did that futures business include  
11 any positions?  
12 A. I don't know. I don't know what  
13 positions were actually on. We didn't handle  
14 the futures side of the arrangements. Those  
15 were handled by S&C, by and large.  
16 Q. Did you have an understanding whether  
17 any futures contracts were included in the  
18 acquisition by Barclays?  
19 MR. MORAG: Object to the form.  
20 A. Yes. I believe, my understanding was  
21 that there were futures positions and listed  
22 options positions.  
23 Q. And what kinds of futures and options  
24 contracts did you understand Barclays to be  
25 acquiring in this transaction?  
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1 ROSEN  
2 That's primarily what I was doing, but  
3 also the clearinghouse issues that arose and the  
4 JP Morgan issues that arose, I had some  
5 involvement in, as events unfolded between then  
6 and the 22nd.  
7 Q. When you say the clearinghouse, are  
8 you referring to DTCC?  
9 A. And OCC.  
10 Q. What regulators did you deal with?  
11 A. I spoke with the SEC. I did have one  
12 or two conversations with staff at FINRA, and I  
13 had a couple of conversations with folks at the  
14 Federal Reserve.  
15 Q. With whom did you deal at the SEC?  
16 A. I had conversations with Mike  
17 Macchiaroli, Randall Roy, and Dan Gallagher.  
18 Q. What were the subject of your  
19 conversations with Mike Macchiaroli?  
20 A. There were a couple of issues. The  
21 principal issue related to the fact that Lehman  
22 operated under a different -- was registered  
23 under a different broker dealer regulatory  
24 regime with different capital requirements than  
25 Barclays, and there were questions about how  
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<p>1 ROSEN</p> <p>2 A. Talking about the 30(b)(6) issues and</p> <p>3 discussing our recollection of them.</p> <p>4 Q. Can you tell me when that happened?</p> <p>5 MR. HUME: I am just going to object,</p> <p>6 because I think the record is unclear</p> <p>7 whether your question is about recollections</p> <p>8 reflected in the affidavit versus 30(b)(6)</p> <p>9 prep.</p> <p>10 Q. Did you distinguish between preparing,</p> <p>11 getting your recollections for your declaration</p> <p>12 and your recollections for your deposition, or</p> <p>13 was that all part of the same process where you</p> <p>14 were preparing to testify either by way of</p> <p>15 declaration or by way of deposition?</p> <p>16 A. Well, obviously the discussions were</p> <p>17 held earlier with respect to the declaration,</p> <p>18 sometime during the week leading up to the</p> <p>19 completion of the declaration. I don't recall</p> <p>20 whether Duane McLaughlin or Dana Fleischman</p> <p>21 participated in those earlier discussions.</p> <p>22 Q. They did, however, participate in</p> <p>23 another round of similar discussions --</p> <p>24 A. After the declaration.</p> <p>25 Q. -- after the declaration.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 And when was that? Was that just in</p> <p>3 the last week?</p> <p>4 A. The week before, primarily. And</p> <p>5 yesterday, but only a small subset.</p> <p>6 Q. And how did you actually get the</p> <p>7 recollection from the partners? How did you</p> <p>8 find out what they remembered?</p> <p>9 A. I'm not quite sure I understand the</p> <p>10 question. We talked amongst ourselves about the</p> <p>11 events and our recollections of them covered by</p> <p>12 the 30(b)(6).</p> <p>13 Q. Did any of your partners remember</p> <p>14 things that you did not remember?</p> <p>15 A. I would say yes, we all had different</p> <p>16 recollections.</p> <p>17 Q. Now, you note in your declaration,</p> <p>18 paragraph 3, you say, "Where indicated, the</p> <p>19 recollection of my partners." Do you see that?</p> <p>20 It's on the second line of paragraph 3.</p> <p>21 A. Um-hm. I do see that.</p> <p>22 Q. Is there any recollection that any of</p> <p>23 your partners gave you that you did not set</p> <p>24 forth in this declaration?</p> <p>25 MR. MORAG: Objection to form and</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 objection on the attorney/client privilege</p> <p>3 and work product.</p> <p>4 MR. MAGUIRE: Are you objecting or</p> <p>5 directing the witness not to answer?</p> <p>6 MR. MORAG: If I understand your</p> <p>7 question correctly, I'm directing him not to</p> <p>8 answer.</p> <p>9 Q. In paragraph 4, sir, you refer to the</p> <p>10 removal of certain language. Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. And you note specifically the draft</p> <p>13 that it was removed from.</p> <p>14 A. I am sorry.</p> <p>15 Q. You refer to language -- you refer to</p> <p>16 a draft that contained that language?</p> <p>17 A. Yes.</p> <p>18 Q. And the draft language that you are</p> <p>19 referring to, you set that forth in paragraph 5;</p> <p>20 is that correct?</p> <p>21 A. I am sorry, in paragraph 4, I don't</p> <p>22 see a reference to paragraph 5.</p> <p>23 Q. That's correct. In paragraph 4, you</p> <p>24 refer to the removal of certain language.</p> <p>25 A. Yes. I am sorry. You are referring</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 to paragraph 5 of the declaration, not</p> <p>3 paragraph -- OK, could you repeat the question.</p> <p>4 Q. I just want to make sure we are on the</p> <p>5 same page here. You're -- when you talk about</p> <p>6 the certain language in paragraph 4, you are</p> <p>7 referring to the language that you set forth in</p> <p>8 quotes in paragraph 5 of your declaration?</p> <p>9 A. Yes. This is a reference to the</p> <p>10 language in 1D.</p> <p>11 MR. MORAG: Let me note for the record</p> <p>12 that the quoted language in paragraph 5 does</p> <p>13 have ellipses and was not intended to be a</p> <p>14 full quote.</p> <p>15 Q. As a matter of reference, we are</p> <p>16 talking about the same language?</p> <p>17 A. Yes.</p> <p>18 Q. At the end of paragraph 4, you say</p> <p>19 that the trustee's position is incorrect, and</p> <p>20 you say, "There was to my or my partners'</p> <p>21 knowledge never any such agreement or</p> <p>22 discussion." Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Sir, was there any discussion, to your</p> <p>25 knowledge, or to the knowledge of your partners,</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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with anyone, about the removal of the language that you discuss in paragraphs 4 and 5 of your declaration?

MR. MORAG: Object to the form, and to the extent -- you can answer to the extent you're going to talk about discussion with anyone in the Lehman side.

THE WITNESS: Yeah, I know, it's fine.

A. The only -- I -- the answer is, I don't recall the specific content of the discussion. But in response to that language, there was -- there was additional language that we drafted that was provided and identified to Lehman's attorneys explaining that this language was needed in light of the changes that had been made to 1D.

Q. And is that, sir, your recollection or the recollection of one of your partners?

A. Well, we gave -- it is our collective recollection that we drafted the additional language, and it was our recollection that we provided that in the form of a handwritten markup, and I don't recall, and I'm not sure any of my partners specifically recall, who actually

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handed the markup over to the Lehman side, but it was provided to the Lehman side in the form of handwritten comments.

Q. And the handwritten comments, are those the ones that included the parenthetical "property held to secure"?

A. Yes, yes.

Q. Have you seen those handwritten comments?

MR. MORAG: Time frame?

Q. At any time?

A. You mean including at the time that they were drafted?

Q. Yes.

A. The recollection of the group was that I drafted them.

Q. Do you recall actually what you did with those handwritten notes?

A. I would have given them to one of my partners.

Q. Have you seen them since the weekend when those notes were prepared?

A. No, no, I have not.

Q. Do you know whether they exist today?

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A. I don't know.

Q. Do you know whether, in fact, you did give them to somebody or what you did with those handwritten notes?

A. My recollection is that I handed them to one of my partners.

Q. Do you know which partner you handed them to?

A. I don't recall specifically.

Q. Do you have a general recollection?

A. I have a general recollection, it would have been Bob Davis or Duane McLaughlin or David Leinwand. It would have been one of those three.

Q. Have you asked your partners for that draft?

A. No, I haven't.

Q. Do you know whether anyone has attempted to locate that draft?

A. I don't know.

Q. Did you talk to anyone on the Lehman side concerning the insertion of the parenthetical that you were proposing in that draft?

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A. Did I personally speak to anyone on the Lehman side? Well, it depends upon -- I am sorry, I personally did not speak to anyone on the Lehman side.

Q. Do you know whether any of your partners spoke to anyone on the Lehman side about including that parenthetical in the clarification letter?

A. Our understanding, our recollection, Cleary's recollection, is that it would have been -- it would have been identified as a change to be made to the agreement, to the -- whoever the lawyer was on the -- representing Lehman that was handling the document.

Q. And do you know who the lawyer on the Lehman side was to whom it was handed?

A. I don't know. I don't know.

Q. And the draft that was handed to that Lehman lawyer, did it have any other handwritten changes?

A. I'm trying to remember. There were two other changes that I recall, and you will have to forgive me for being a little bit unclear about the timing or the sequencing, but

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<p>1 ROSEN</p> <p>2 I believe there were two other changes.</p> <p>3 One, there was language -- let me back</p> <p>4 up and ask you this question and get</p> <p>5 clarification. Are you asking me just about the</p> <p>6 language that's described in 1D, or are you</p> <p>7 asking about other changes to the clarification</p> <p>8 letter?</p> <p>9 Q. Let's get our time frame and context</p> <p>10 together first. I'm talking to you specifically</p> <p>11 about the draft that I understand from your</p> <p>12 testimony in which you, in handwriting, inserted</p> <p>13 the parenthetical that includes the words "and</p> <p>14 property held to secure."</p> <p>15 A. Yes.</p> <p>16 Q. And the question is whether that draft</p> <p>17 included any other proposed changes.</p> <p>18 A. I'd have to go back and look at the</p> <p>19 sequence of the drafts. There were two other</p> <p>20 changes that may or may not have been</p> <p>21 simultaneous. I don't know. They may have been</p> <p>22 given sequentially but have been processed by</p> <p>23 the other side as part of one turn. I don't, I</p> <p>24 don't recall.</p> <p>25 But there was a change in the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 clarification of language concerning 15c3-3,</p> <p>3 provision to add the word "or value" at the end</p> <p>4 of a sentence, and there was a sentence to</p> <p>5 clarify what had been agreed as part of the</p> <p>6 resolution of issues with DTC, that the</p> <p>7 liabilities to DTC associated with Lehman were</p> <p>8 excluded liabilities under the APA.</p> <p>9 Q. I am going to ask you again</p> <p>10 specifically about the draft in which you</p> <p>11 inserted that parenthetical "property held to</p> <p>12 secure."</p> <p>13 With respect to that draft, can you</p> <p>14 tell me what, if anything, was said about anyone</p> <p>15 on the Barclays side or the Cleary side to the</p> <p>16 person on the Lehman side who received that</p> <p>17 draft?</p> <p>18 A. No, I can't give you verbatim what</p> <p>19 would have been said, but what would ordinarily</p> <p>20 happen in that circumstance is that the changes</p> <p>21 would be identified to the other side so they</p> <p>22 could understand what was being provided to</p> <p>23 them.</p> <p>24 Q. And when you say the changes would be</p> <p>25 identified, the other side would be shown what</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 the proposed language was?</p> <p>3 A. Yes. We did not control the</p> <p>4 documents, so Cleary did not input those</p> <p>5 changes. Those changes were put into whatever</p> <p>6 revised draft emerged in whatever time it</p> <p>7 emerged by the Lehman's counsel.</p> <p>8 Q. Other than pointing out the changed</p> <p>9 language, do you know what, if anything, was</p> <p>10 said to Lehman about the addition of that</p> <p>11 parenthetical?</p> <p>12 A. No. Not at that time.</p> <p>13 Q. When you say not at that time, is</p> <p>14 there some other time that there was a</p> <p>15 discussion --</p> <p>16 A. Not about that specific parenthetical</p> <p>17 but about the subject, there were a lot of --</p> <p>18 there were exchanges of a number of</p> <p>19 communications and documents that I think were</p> <p>20 addressed to the same issue that were exchanged.</p> <p>21 Q. I would like to go through some of</p> <p>22 them, and the first one I'd like to take is the</p> <p>23 one that you refer to in paragraph 4. And</p> <p>24 that's the draft language that you have put</p> <p>25 forth in quotes in paragraph 5.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 And if we get our sequence right,</p> <p>3 there was a draft that included this language</p> <p>4 which has an express reference to margin, and</p> <p>5 that's the language you have set forth in</p> <p>6 paragraph 5, right?</p> <p>7 A. I am sorry, could you repeat the</p> <p>8 question about this language.</p> <p>9 Q. Yes. Let's get our context right</p> <p>10 first.</p> <p>11 I invite you to look at paragraph 5</p> <p>12 and look at the draft language that you have,</p> <p>13 starting with the quotes, "any and all</p> <p>14 property."</p> <p>15 A. I am sorry, where are you in</p> <p>16 paragraph 5?</p> <p>17 Q. About midway down, the second full</p> <p>18 sentence: "The draft language accomplished this</p> <p>19 by making clear that the definition of excluded</p> <p>20 assets did not include "any and all property,"</p> <p>21 and it continues.</p> <p>22 A. Correct.</p> <p>23 Q. So for my next couple of questions, I</p> <p>24 am going to be asking you specifically about</p> <p>25 that language and the draft in which that</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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language was deleted or crossed out. Are you with me?

A. Yes.

Q. Did you see the draft in which that language was crossed out?

MR. MORAG: Object to the form. I also object to the representation that all of the language was crossed out. If you want to show him the actual draft, it may be more appropriate.

A. I saw a draft which included a number of changes in which language was moved to other sections and modifications were made, and those modifications included modifications to this language. Yes, I did.

Q. And you refer to this as the removal of certain language in paragraph 4?

A. Well, I would -- without mincing words, I would say that there was a draft prepared that dealt with some of these issues in other ways, in other provisions of the agreement.

Q. Did you see the draft in which the language you quote in paragraph 5 was removed?

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A. Yes. Well, subject to the caveat as to what you mean by remove.

Q. What I mean by removed is the language that you quote was deleted, it was marked as deleted?

MR. MORAG: Object to the form.

Q. Did you see such a draft?

A. I saw a draft in which this language did not appear in this form.

Q. Did this language appear in any other form in that draft?

A. Some of it did and obviously some of it didn't.

Q. And what part of it did not?

A. I'd have to -- I would have to look at the particular draft of the agreement to answer that question. I can't recall with accurate -- with accuracy what the other changes were that were made at the same time as this change was made.

Q. Once you saw that draft, did you personally have any discussions with anyone on the Lehman side concerning the removal of any of this language?

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A. As I said earlier, we prepared language, I prepared language, and that language was provided to Lehman, and they would have identified to Lehman that this language was now necessary.

Q. Yes. And I understand that testimony. I was just asking whether there was any other conversation that you recalled.

A. No, not that I was -- not that I am aware of.

Q. Are you aware of any discussion involving any of your partners and anyone on the Lehman side --

A. Actually, hang on just a second. Hang on just a second.

I need to see the clarification agreement in which this language appears, because this language deals with a number of issues that were in flux at the time, some of which were the subject of discussions.

There was language that addresses 15c3-3, as I said earlier, that also addressed the DTC situation which had changed. And so -- and there were conversations obviously among the

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parties about a number of issues that are addressed in this language.

But as I said, with respect specifically to the language that was added in response in section 1(a)(ii)(C), the conversation would have been in connection with the transmittal of that language to the Lehman side.

Q. And you don't recall any other communication with the Lehman side concerning the removal of this language beyond what you have told us?

MR. HUME: Object to the form.

MR. MORAG: Same objection.

A. I think the -- other than the language itself, other than the changes that were proffered by Cleary having received a revised draft and discussions that I suspect we are going to cover relating to 15c3-3, and the discussions relating to DTCC, there were no specific conversations that we had and none that we thought were necessary, because this was part of the deal.

Q. Did you have any discussions with

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**anyone on the Lehman side concerning margin?**

MR. MORAG: Time frame?

**Q. Over the weekend prior to the closing?**

MR. MORAG: Objection to the form.

Objection to the term "margin."

**A. Well, there were conversations --**

**there were e-mail communications in which I was**

**copied and Lehman's people were copied about**

**what was going to happen to the margin at OCC.**

**Not just the margin but the property associated**

**with those accounts, yes, in which OCC said,**

**consistent with the order in their -- what was**

**then the draft TAA that they had prepared, was**

**going to be transferred to Barclays.**

**Q. Any discussions about margin with**

**anyone on the Lehman side other than in**

**connection with the OCC?**

MR. MORAG: Objection to the form.

**A. There was an e-mail to me copying**

**Lehman, I believe, about the transfer of a**

**certain amount of margin -- I can't remember**

**exactly what it was -- in which Lehman was**

**copied. I think that e-mail was from Jim**

**McDaniel. I think the trustee's representatives**

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**A. DTC and OCC.**

**Q. Do you recall any discussion**

**concerning margin at DTCC?**

**A. Discussing margin at DTCC? Well,**

**there were discussions about the DTC accounts**

**and how they were going to be handled, and those**

**accounts would have included both proprietary**

**positions, customers' positions, positions that**

**may have been margined, and so indirectly, all**

**of those discussions with DTC potentially**

**included discussions about margin, to the extent**

**that that was relevant.**

**Q. Any express reference to margin?**

**Margin coming up in any express way in any**

**conversation with DTC that you remember?**

**A. Well, in the sense that to the extent**

**that anything constituted margin that was in**

**there and the discussions covered those**

**accounts, yes. But I don't remember us**

**specifically singling out margin as a topic.**

**Q. Do you recall any discussions about**

**margin at any foreign exchanges or**

**clearinghouses?**

**A. Again, I don't recall conversations**

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were also copied on that.

**Q. And that's in connection --**

**Mr. McDaniel represented the OCC?**

**A. The OCC.**

**Q. Yes.**

**Other than with respect to the OCC,**

**any discussions that you had concerning margin?**

**A. Well, verbal discussions?**

**Q. Yes.**

**A. I believe that there were conference**

**calls about the clearinghouses. I think they**

**may have been scheduled for Saturday or Sunday,**

**and the arrangements that were going to be made**

**and the transfers, and I believe that**

**representatives from Lehman were on those calls.**

**I cannot recall specifically, either the**

**specific discussions or exactly when they**

**occurred.**

**And it would have -- I think it**

**probably included discussions about how things**

**were going to be done in the transfer of margin**

**and the like.**

**Q. What clearinghouses are you referring**

**to?**

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**with foreign clearinghouses, but to the extent**

**that we discussed the accounts that were going**

**over and the credit support for them, to the**

**extent that as part of the business that was**

**being transferred, there were positions in those**

**accounts, they would have been covered by the**

**conversations.**

**Q. And do you recall any specific such**

**conversations?**

**A. Well, there were negotiations between**

**the parties about the business, so if you're**

**saying that I'm taking the FCM business and if**

**that business includes positions that are traded**

**on foreign markets, then by definition you're**

**talking about them as part of the same thing.**

**If you are taking that business and customer and**

**other deposits associated with them and assets**

**associated with that business, then yes, you are**

**talking about the margin indirectly, although**

**you may not be specifically singling it out.**

**Q. That's what I want to do. I want to**

**single it out.**

**Do you recall a specific singling out,**

**a specific mention of either margin or guarantee**

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<p>1 ROSEN</p> <p>2 <b>fund deposit in any conversations other than in</b></p> <p>3 <b>connection with the OCC?</b></p> <p>4 MR. HUME: Objection, asked and</p> <p>5 answered.</p> <p>6 A. I think I would say that the</p> <p>7 discussions about the assets that were being</p> <p>8 transferred in connection with the business and</p> <p>9 any deposits is a discussion about guarantee</p> <p>10 fund deposits and margin at those clearing</p> <p>11 organizations.</p> <p>12 Q. I understand that testimony. The</p> <p>13 question is, do you have a recollection or have</p> <p>14 you heard from any of your partners their</p> <p>15 hearing that somebody specifically referred,</p> <p>16 specifically to margin or guarantee fund deposit</p> <p>17 in any of those discussions?</p> <p>18 A. I think that the answer to your</p> <p>19 question is that in the documents, that is</p> <p>20 covered. And I'm confident that there may have</p> <p>21 been -- I shouldn't say that.</p> <p>22 I don't recall the specific</p> <p>23 conversations that we had with the clearing</p> <p>24 organizations and other lawyers who may have</p> <p>25 been involved. We may have or may not have</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 specifically referred to the word "margin" on</p> <p>3 those calls.</p> <p>4 But we did repeatedly exchange</p> <p>5 communications regarding the various forms of</p> <p>6 assets that would be coming over, for example,</p> <p>7 under the TAA.</p> <p>8 Q. We have been talking now about the</p> <p>9 time period over the weekend prior to the</p> <p>10 closing. I would like to just ask you if I have</p> <p>11 missed anything, if we go back to the work that</p> <p>12 you were doing from the 15th on, anytime up to</p> <p>13 that weekend. During that period, do you recall</p> <p>14 any discussions specifically in which margin or</p> <p>15 guarantee fund deposit were mentioned?</p> <p>16 A. Again, I would say in the deal</p> <p>17 documentation relating to the transfer of assets</p> <p>18 associated with those businesses that were being</p> <p>19 transferred and the agreements as to the</p> <p>20 inclusion of deposits, including customer</p> <p>21 deposits, yes, they were the subject of</p> <p>22 communications in that form.</p> <p>23 Q. And what discussion do you remember in</p> <p>24 which anyone specifically referred to margin?</p> <p>25 A. As I say, I don't recall specifically</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 the content of specific conversations that I may</p> <p>3 have had at that time.</p> <p>4 Q. Is there any conversation that you're</p> <p>5 aware of where anyone on the Barclays or Cleary</p> <p>6 side had specifically discussed guarantee funds</p> <p>7 deposit?</p> <p>8 MR. MORAG: You can answer to the</p> <p>9 extent it involves someone on the Lehman or</p> <p>10 OCC or DTC side as well.</p> <p>11 A. It was never raised as an issue for</p> <p>12 discussion, because it was assumed by all</p> <p>13 parties, I think, that it was part of the</p> <p>14 business. And certainly nobody on the Lehman</p> <p>15 side ever suggested or raised the question as to</p> <p>16 its needing to be singled out from the language</p> <p>17 that otherwise covered it.</p> <p>18 Q. Now, when you saw that the draft</p> <p>19 language referring to margin and guarantee fund</p> <p>20 deposit had been removed from the draft, did</p> <p>21 that suggest to you that there needed to be a</p> <p>22 discussion about this or that someone on the</p> <p>23 Lehman side was suggesting that they had</p> <p>24 different assumptions or different</p> <p>25 understandings from what you had?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 MR. MORAG: Objection to form.</p> <p>3 Compound.</p> <p>4 A. As I mentioned, the language that came</p> <p>5 out was actually not specific to OTC -- to</p> <p>6 listed derivatives or listed derivatives</p> <p>7 customers. It was language that sort of</p> <p>8 addressed a variety of issues.</p> <p>9 And so I would not have drawn any</p> <p>10 necessary inference as to what specifically the</p> <p>11 concerns were that, from the Lehman side, were</p> <p>12 being addressed. There were changes to the deal</p> <p>13 that needed to be addressed in that language.</p> <p>14 There were changes in the agreements that</p> <p>15 related to the handling of -- I'm sorry. There</p> <p>16 were changes in the language that was</p> <p>17 documenting, for lack of a better reference, the</p> <p>18 15c3-3 treatment, and indeed the fact that the</p> <p>19 DTC arrangement had essentially changed.</p> <p>20 So it was clear that the language that</p> <p>21 was modified needed to be modified. As to</p> <p>22 whether or not that modification signaled a</p> <p>23 specific view about the treatment of credit</p> <p>24 support for exchange-traded derivatives, you</p> <p>25 would never know until you clarified it with</p> <p>TSG Reporting - Worldwide 877-702-9580</p>



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your own language, and to my knowledge, nobody on the Lehman side, when presented with that language, expressed any surprise or objection.

So I think the clear inference is that it was not a surprise to them, and therefore, we inferred that there was no intent to communicate to us that they didn't think it was part of the deal, or anybody else who had the opportunity to see those changes, which would have been all the signatories.

**Q. So you didn't feel there was any need to go up and have a specific discussion with the folks on the Lehman side about the removal of the language?**

A. I didn't think that there was anything more that needed to be done than to provide to them the language that we thought was appropriate in order to clarify what the deal's agreement was with respect to the treatment of that credit support, that property. That is the way we ordinarily communicate in a transaction of this type.

**Q. In the beginning of the, of your paragraph 5, you note that the draft language at**

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**issue was an attempt to accurately document the business deal. Do you see that?**

A. Yes.

**Q. What is the business deal that you are referring to there?**

A. Here, that Barclays was acquiring the exchange-traded businesses, exchange-traded derivatives businesses of Lehman and the assets and customer deposits and other deposits that were part of that business.

**Q. Are you aware of whether there was any business discussion between the Barclays and Lehman folks concerning specifically the acquisition of either margin or clearing fund, guarantee fund deposit?**

MR. HUME: Objection, asked and answered.

MR. MORAG: Objection, form.

A. I don't know whether there were or weren't. I assume as part of the negotiation of the deal leading up to the description, the documentation of it, that it was implicit in those discussions.

**Q. You go on to say that the draft**

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**language accomplished this, the beginning of the next sentence. Do you see that, sir?**

A. Um-hm.

**Q. Can you tell me, what did the draft language accomplish?**

A. What did the -- in relation to the exchange-traded derivatives, that it -- what it -- what this -- I am sorry, let me see.

It included language that, as I said, covered a wide variety of things, but also would have provided -- I am sorry, included language that clarified that the property of any kind that was basically held by any of these or in any of these forms, was not an excluded asset under the terms of the deal documentation.

**Q. And in the quotes, you have "any and all property," and then you have square parenthesis, "including cash." Do you see that?**

A. Um-hm.

**Q. Why did you include those square brackets around the words "including cash"?**

A. Just as a clarification. It's not necessary, but just for the sake of -- for the avoidance of any lack of clarity.

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**Q. Why did you not include those words in the handwritten parenthetical that you provided?**

A. The answer to that question -- I'm going to try to answer this without going into attorney/client privileges, but the answer to that question is because we also came to believe that this was not the best location for clarifying this, because this got caught up in provisions dealing with, you know, what the parties understood to be an exception to the excluded assets, and excluded assets included cash. So we wanted to make sure in this provision that it was relevant.

But on the other hand, we realized that providing this clarification in an exclusion to the -- to an exclusion was not the clearest way to do it and, therefore, we decided in response, rather than go back into this provision and start wordsmithing, which we didn't have the time to do, we would just make it abundantly clear, in as concise words as we could, what the purchased assets included in relation to that business.

**Q. And you made it abundantly clear by**

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<p>1 ROSEN</p> <p>2 putting the parenthetical that made clear it</p> <p>3 included property held to secure?</p> <p>4 A. Yes.</p> <p>5 Q. And my question is, why did you not</p> <p>6 include, beside "property," the words "including</p> <p>7 cash"?</p> <p>8 A. Didn't think it was necessary. At</p> <p>9 this point in time, it was 5 or 6 o'clock in the</p> <p>10 morning. We were extremely concerned about</p> <p>11 whether we were going to run out of time in</p> <p>12 terms of the objective of having this deal</p> <p>13 signed in time to be announced early in the</p> <p>14 morning, so as to avoid any negative sort of</p> <p>15 market reaction to the deal not being announced.</p> <p>16 And we were trying in as concise a</p> <p>17 form as possible and as clear a form as possible</p> <p>18 to get it down and not to get embroiled in</p> <p>19 parsing words.</p> <p>20 So I, I mean did I have -- would I</p> <p>21 have preferred to have had hours to have sat</p> <p>22 down and drafted it and perfected it? I</p> <p>23 certainly would. But I thought it was</p> <p>24 absolutely clear that if we said "any property,"</p> <p>25 that it would include cash, noncash, securities,</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 nonsecurities, whether or not it was held by</p> <p>3 Lehman, by a clearing organization, wherever it</p> <p>4 was, and whoever was holding it and whatever its</p> <p>5 character might be.</p> <p>6 I think for the purpose of clarifying</p> <p>7 what might have been a subject of dispute in</p> <p>8 light of the deletion of that language, we</p> <p>9 didn't think it was actually necessary to</p> <p>10 include the language, but we were concerned</p> <p>11 about the sort of negative inferences that could</p> <p>12 arise, and so we thought because it was an</p> <p>13 important point for the deal that we would make</p> <p>14 it as clear as we could, as concisely as we</p> <p>15 could.</p> <p>16 Q. You had had a discussion, and we will</p> <p>17 get to this a little bit later, on the subject</p> <p>18 of whether cash in the 15c3 account could be</p> <p>19 transferred to Barclays. You recall that?</p> <p>20 A. Yes.</p> <p>21 Q. And in connection with that, some of</p> <p>22 the Lehman people at least took the position</p> <p>23 that cash could not be properly transferred?</p> <p>24 A. I wouldn't describe what they said as</p> <p>25 that. I would say, this was part of the purpose</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 of the clarification letter. There were</p> <p>3 provisions about deposits, customer deposits.</p> <p>4 There were provisions in the excluded assets</p> <p>5 provisions of the APA regarding bank accounts.</p> <p>6 And I think it was clear to us that the 15c3-3</p> <p>7 assets were assets of the business that we were</p> <p>8 buying.</p> <p>9 I would describe what I heard at least</p> <p>10 as being an expression of concern as to whether</p> <p>11 in light of what had been said to the court</p> <p>12 about bank deposits, whether or not if we were</p> <p>13 going to include cash in bank deposits -- that</p> <p>14 would be in bank deposits, whether some</p> <p>15 additional steps might need to be taken, which</p> <p>16 would have been inconsistent with completing the</p> <p>17 deal and being able to announce it.</p> <p>18 But I don't recall anybody saying that</p> <p>19 it couldn't be done or that it wasn't part of</p> <p>20 the deal or that it wouldn't be permitted or</p> <p>21 that it wasn't part of the sale order. There</p> <p>22 was, I would have said, a decision taken to</p> <p>23 avoid the issue by limiting the account assets.</p> <p>24 MR. HUME: We have been going for</p> <p>25 about an hour. Can we have a break?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 MR. MAGUIRE: Sure. If we can just</p> <p>3 wrap up this. It might take a couple of</p> <p>4 minutes.</p> <p>5 Q. Were you at the sale hearing?</p> <p>6 A. Only during the, for lack of a better</p> <p>7 word, the intermission. It went into recess and</p> <p>8 I was there. I was not actually there at the</p> <p>9 time that it was --</p> <p>10 Q. Do you know whether the court was told</p> <p>11 anything about bank deposits as opposed to cash?</p> <p>12 A. No, I don't know. I just know that</p> <p>13 the issue about it was raised, and under the</p> <p>14 circumstances, people were willing to eliminate</p> <p>15 the issue, rather than -- because I think the</p> <p>16 feeling was that if we didn't close before the</p> <p>17 Monday open, there may have been greater</p> <p>18 jeopardy to the deal.</p> <p>19 Q. In order to avoid the issue, Barclays</p> <p>20 agreed that it would not take any of the cash in</p> <p>21 the Wells Fargo account that was part of the</p> <p>22 15c3 account?</p> <p>23 MR. MORAG: Objection to the form.</p> <p>24 A. I would say Barclays agreed to include</p> <p>25 language in the clarification letter that only</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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called out the transfer of a certain amount of securities associated with the 15c3 account, or if those weren't available, other securities of similar value.

**Q. And did not call out the 1 billion dollars in cash that was at Wells Fargo?**

A. Not in the clarification provision, correct.

**Q. Now, given those discussions, and the decision by everyone to avoid the cash issue, did it occur to you that the words "including cash" should be included in the parenthetical when you described property held to secure?**

A. No. No, because I thought there was a clear distinction between deposits and customer deposits and LBI cash in its bank accounts.

MR. MAGUIRE: This is a good time for a break.

(Recess)

MR. MORAG: I should just put on the record, to the extent, Mr. Maguire, you're curious, Cleary did search for all documents, including any handwritten notes, and our production does not include them

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because we were not able to find the markup that you asked about in your examination.

MR. MAGUIRE: I appreciate that.

MR. HUME: I should also state we have looked for it in the Weil production, have not found it. I'm double checking.

THE WITNESS: Which would have been consistent with our handing it to Weil to deal with the document.

BY MR. MAGUIRE:

**Q. Sir, before the break, we were in paragraph 5 of your declaration and we were talking about the -- what you referred to as the business deal in the first and second lines of that declaration.**

**Was it your understanding that the business deal was documented in the asset purchase agreement?**

A. It was my understanding that the deal was documented in the asset purchase agreement, the first amendment in the clarification letter.

**Q. The language that we have been talking about in the quotes at the bottom of page 2 of your declaration, starting with "any and all**

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**property," did you draft that language?**

A. I'm sorry, could you --

MR. MORAG: Starting here.

**Q. Paragraph 5 on page 2 and starting with the language we have been talking about that starts with the quotation "any and all property."**

A. I was involved in its drafting, but I think it was, like many things, a bit of a group process.

**Q. So who were the members of this group?**

A. The members of the group on the Cleary side would have been me, Dana Fleischman, Bob Davis, Duane McLaughlin, possibly David Leinwand. Whether -- the extent to which any of one of them was specifically involved in particular language, I don't recall.

**Q. So this was a collective, this language was a collective drafting effort of a number of Cleary lawyers?**

A. Yes, although I would say probably principally me.

**Q. When it was proposed to the Lehman side, your understanding was that this language**

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**accurately reflected the business deal?**

A. Yes.

**Q. Did you ever ask anyone to identify who had negotiated this specific part of the business deal?**

MR. MORAG: Object to the form.

I will let you answer if it is -- as to the yes or no, but if it involves a privileged communication, do not go into the substance of the communication.

A. I assume it was negotiated by the principals who negotiated the deal that was ultimately documented in the APA and these documents. I was not privy to those specific negotiations.

**Q. Do you know the names of the individuals who negotiated the deal specifically on this point?**

A. I don't know who participated in each discussion. I know that Archibald Cox and Michael Klein and Jonathan Hughes and Rich Ricci were involved in the negotiations, but I did not -- I don't have personal knowledge of those exchanges.

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**Q. Do you know who was involved on the Lehman side specifically with respect to the business deal that's -- that you describe in --**

A. Whoever was in those conversations, and I wasn't present, so I couldn't identify them.

**Q. Did the business deal ever change? I'm talking now specifically about that part of the business deal that's the subject of the language you and your group drafted and that you put forth in paragraph 5 of your declaration. Did that part of the business deal change anytime after the discussion of the asset purchase agreement?**

MR. MORAG: Object to the form.  
You can answer.

A. I would say that the only respect in which it changed was reflected in the 3-3 provisions in which Barclays agreed in essence to relinquish the claims specifically in the clarification letter to the -- the non-769 million or whatever it was of securities in the 15c3-3 account.

There were aspects in which the deal

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**maintained by or on behalf of." Can you tell me what is the distinction here between an account maintained by as opposed to an account maintained on behalf of LBI?**

A. Well, Lehman, when Lehman conducts -- when a broker dealer conducts business with a customer or on behalf of an affiliate or for its own proprietary account, it will reflect, it will be required to reflect on its own books and records accounts which are its accounts. Those assets may be held by custodian banks, other banks, clearing agencies, clearing organizations.

So this is meant to not be limited to those specific alternatives to the account as it is described on the books of the carrying broker, to carry anything, wherever it may be, if it was to secure obligations in essence for which BCI was going to become responsible.

**Q. And you go on to say, "for which Barclays shall become responsible as of the closing." What were you referring to there?**

A. At this point, I believe it was unclear how the DTCC accounts were going to be

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was evolving as it contemplated it would at the sale hearing in relation to the DTC arrangements. That is all that comes to mind.

**Q. And specifically with respect to assets that were related to derivatives, margin or clearing funds deposit, did the deal change anytime after -- the business deal change at any time after the execution of the asset purchase agreement?**

A. I'm not aware that it ever changed. only that it was clarified.

**Q. You refer, at the bottom of page 2 and top of page 3 of your declaration, to the obligations of LBI or any other person. To whom are you referring with the words "any other person"?**

A. It could be -- well, without limitation on what it might include, the two obvious inclusions would have been the obligations of LBI or any affiliate or any customer who was involved as part of these transactions or part of the business that was being transferred.

**Q. Then you say, "in an account**

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handled, but it was clear that, for example, to the extent that Barclays was a clearing, either a clearing member of a clearing organization which carried accounts, or was a clearing broker carrying positions with other clearing brokers who were clearing members of other exchanges on which positions may have been carried in or out of the United States, whatever the form, that would have been covered.

The point was that if there was credit support available and Barclays was on the hook and potentially subject to liabilities associated with that, that all of those assets would be available.

**Q. And were Barclays -- in the case of a foreign account, where Barclays was not taking -- stepping into the shoes of Lehman and taking over from Lehman, the obligations to a foreign exchange or clearing corporation, it would get the exchange-traded derivatives but not the associated assets?**

MR. MORAG: Object to form.

A. Not at all. Not at all. That's not what I am saying at all.

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In fact, if BCI was going to be in the chain of financial responsibility for those positions, whether it was because they were taking the account or they were carrying the account or they were carrying the account with a foreign clearinghouse or another broker who was in the clearinghouse, that that would be included.

**Q. And that's what I am trying to understand. Where the flip side of that happens, where Barclays was not taking the account, did you consider what happens when Barclays does not take the account at a foreign exchange?**

A. I think that language is dealt with elsewhere. And I need the clarification letter to --

**Q. So you believe there is a separate provision that deals with when Barclays takes exchange-traded derivatives --**

A. I don't recall the specific language. I would prefer to --

MR. MORAG: You have to --

A. I am sorry, I prefer to look at the  
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clarification letter.

**Q. Well, we will certainly get to the clarification letter, but your understanding is that that's not covered by this language; is that correct?**

A. Well, there are ellipses in here. This is a very long provision, and I'm not prepared to summarize all the things that it does or does not cover in this abbreviated form. So if you want me to tell you what it covers, you are going to have to give me the provisions so that I can look at them.

**Q. Sounds fair. I think it is Exhibit 25.**

MR. MORAG: Mr. Maguire, if I recall correctly, Exhibit 25 is the executed clarification letter. You have been asking him questions about language which was not included in the executed clarification letter. So I'm not sure that's going to be responsive to his request.

**Q. That may be fair. Maybe we should go through the drafts.**

A. I think we should look at the draft  
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that has this --

MR. MORAG: Only if you have questions about the draft. If you have questions about the final, show him the final.

**Q. Why don't we do that. We will go through the drafts and then we will take a look at the final.**

**Before we do that, let me ask you to scroll down to the end of that paragraph, the bottom of paragraph 5. You refer there to, "which is consistent with the discussions of the lawyers from both sides."**

**Do you see that reference to those discussions?**

A. Um-hm.

**Q. Can you tell me what discussions you are referring to there?**

A. The discussions negotiating the terms of the deal, which were that Lehman sold the exchange-traded derivatives business and all assets associated with it and all deposits and customer deposits. But basically it is consistent with the treatment in the documentation and therefore the negotiation of

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**the documentation relating to what it was that Barclays was getting.**

**Q. Is there any specific conversation among any two or more lawyers that you were intending to refer to in that last sentence of paragraph 5?**

A. I was not present in the negotiations of the original provisions in the APA that this clarifies.

**Q. And you're not aware of any conversations that your partners have told you they remember from the negotiation of the original deal?**

**What I am trying to clarify is just, did you have in mind when you wrote this reference to discussions something either that you remembered or something that one of your partners told you about?**

A. No. I'm referring to what would have had to have been discussed if the parties were to come to the terms on which they signed the APA.

**Q. I am going to show you a document that has previously been marked as Exhibit 30. Do**

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<p>1 ROSEN</p> <p>2 <b>know when you're ready.</b></p> <p>3 <b>And my first question is going to be,</b></p> <p>4 <b>have you seen this draft before?</b></p> <p>5 A. I've seen before an e-mail transmittal</p> <p>6 from Michael Mazzuchi passing on a draft of the</p> <p>7 clarification letter to DTCC and its counsel at</p> <p>8 their request, and there being a draft of the</p> <p>9 clarification letter attached to it that was</p> <p>10 provided to us by Weil.</p> <p>11 But as to whether this is exactly the</p> <p>12 same draft, I can't say. I would have to</p> <p>13 verify.</p> <p>14 <b>Q. You will see at the bottom of page 1</b></p> <p>15 <b>of the draft is a reference to LBI's clearance</b></p> <p>16 <b>boxes.</b></p> <p>17 A. I see that.</p> <p>18 <b>Q. Do you know why the word DTC was not</b></p> <p>19 <b>included there?</b></p> <p>20 A. My understanding is that it was not</p> <p>21 included because there were clearance box assets</p> <p>22 held at locations other than DTCC. So DTCC was</p> <p>23 not the exclusive depository of clearance boxes,</p> <p>24 is my recollection.</p> <p>25 <b>Q. And what were the other depositories?</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 A. I don't remember knowing the details.</p> <p>3 <b>Q. Did anyone consider saying DTC and</b></p> <p>4 <b>other clearance boxes?</b></p> <p>5 MR. MORAG: Object to the form.</p> <p>6 A. I wouldn't speculate as to whether</p> <p>7 somebody did or didn't. They may have.</p> <p>8 <b>Q. In a prior draft, there had been a</b></p> <p>9 <b>reference to the box 074, which I understand was</b></p> <p>10 <b>the DTC box. Do you have any knowledge as to</b></p> <p>11 <b>why that reference was dropped?</b></p> <p>12 A. I am not certain, but I have a</p> <p>13 recollection that it was because 074 may not</p> <p>14 have included all of the clearance box assets,</p> <p>15 that they may not have been confined to the</p> <p>16 account 074. But I'm not 100 percent certain.</p> <p>17 I have a recollection of something along those</p> <p>18 lines.</p> <p>19 <b>Q. If you look at the bottom of page 1,</b></p> <p>20 <b>you will see there is a parenthetical that says,</b></p> <p>21 <b>"provided, however, that purchaser in its</b></p> <p>22 <b>discretion may elect within 60 days after the</b></p> <p>23 <b>closing to return any such securities to LBI."</b></p> <p>24 <b>Do you see that?</b></p> <p>25 A. Yeah.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 <b>Q. And can you tell me what was the</b></p> <p>3 <b>purpose of that?</b></p> <p>4 A. I'm not sure that we were the source</p> <p>5 of that language. I think that on its face, it</p> <p>6 seemed to have contemplated that there may be</p> <p>7 things that, in the clearance box, that Barclays</p> <p>8 might not have wanted.</p> <p>9 <b>Q. And do you have any understanding as</b></p> <p>10 <b>to what kinds of assets Barclays would not want</b></p> <p>11 <b>from the clearance box?</b></p> <p>12 MR. HUME: Objection, calls for</p> <p>13 speculation.</p> <p>14 A. As I say, I'm not sure that this was</p> <p>15 motivated by Barclays, and I'm not sure that</p> <p>16 this wasn't an option that was being provided to</p> <p>17 Barclays that Barclays didn't see any reason to</p> <p>18 negotiate, since it gave them the ability to do</p> <p>19 something but not an obligation to do it.</p> <p>20 <b>Q. But you don't have knowledge as to</b></p> <p>21 <b>what prompted this?</b></p> <p>22 A. No, I don't. Or I should say I don't</p> <p>23 recall.</p> <p>24 <b>Q. If you turn to page 4, and see the</b></p> <p>25 <b>paragraph 8, transfer of customer accounts. And</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 <b>towards the end of that, you will see a</b></p> <p>3 <b>reference to 15c3.</b></p> <p>4 A. Yes.</p> <p>5 <b>Q. And at the end of that sentence, it</b></p> <p>6 <b>refers to the phrase, "or securities of</b></p> <p>7 <b>substantially the same nature and value."</b></p> <p>8 A. Yes.</p> <p>9 <b>Q. Can you tell me how did those words</b></p> <p>10 <b>get to be inserted in the clarification letter?</b></p> <p>11 MR. MORAG: Which words? All of them?</p> <p>12 <b>Q. The words "or securities of</b></p> <p>13 <b>substantially the same nature and value."</b></p> <p>14 A. My recollection of the events for</p> <p>15 that, following on the discussion which led to</p> <p>16 the limiting of this provision to 769 million of</p> <p>17 securities, that Harvey Miller raised the</p> <p>18 question whether or not it was clear that we</p> <p>19 could agree to this.</p> <p>20 And I told him that I was not aware of</p> <p>21 a limitation, particularly to the extent as had</p> <p>22 been represented, that the 769 million dollars</p> <p>23 was excess to the level that Lehman was required</p> <p>24 to reserve under 3-3 as of that date, and in</p> <p>25 response to the question can we do it, I</p> <p>TSG Reporting - Worldwide 877-702-9580</p>



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suggested that if there was a concern along those lines, which we didn't share -- and I'll say only, my recollection is there was a question raised about it -- that we say to the extent permitted by applicable law and as soon as practicable after the closing.

And because the provision by its terms then raised a question about whether or not this value was going to be conveyed, because the reason this was in here and was the subject of discussion was that there was a significant erosion or concern about the erosion of value and assets that were contemplated to be delivered initially but were not available to be delivered, and that Lehman identified this as a source of value, and so we wanted to make sure that that value was conveyed.

And so as a result of this language, it made us think, well, fine, if you can't give us these 769 million of securities, give us those other securities of a similar nature and value.

That's my recollection of the origins of this provision.

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**Q. I'll show you a document we have previously marked as Exhibit 451. Have you seen that before, sir?**

A. I don't recall that I necessarily saw precisely this. I do recall that there was a representation made that the SEC had approved as excess a certain level of value and that there was an e-mail. We thought that we were going to see an e-mail saying that. Instead, there was an e-mail, I recall, but which didn't involve -- didn't come from the SEC, but reported that it was approved.

I don't think I have seen this particular document, and I can't say that I recall with precision the numbers for the allocations between cash and securities.

**Q. Did you ever discuss Lehman's 15c3 account with Mike Macchiaroli?**

A. I don't recall being able -- at the time that I sort of first saw this, which I believe was on a -- or not this -- I was made aware of the e-mail and shown something, I do not believe that I spoke to Mike Macchiaroli, but as I mentioned at the outset of this, I had

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earlier had a conversations with Mike which, while we didn't discuss specifically the 3-3 reserve account or the amount that was excess, I came away with the impression that he was optimistic that there was going to be sufficient assets.

So I did not have a -- I did not have a -- I did not have a confirmation from him. I didn't have a concern that there would be a deficiency, but I did not have an opportunity to actually go over this with him.

**Q. So in your earlier conversation with Mr. Macchiaroli, he was optimistic that there would be sufficient assets available to pay all customer claims; is that correct?**

A. Yeah. That -- well, I don't think he would have -- I don't think he would have -- I don't mean to put words in his mouth that he would have made a representation to those effects, but I came away with an impression that he was optimistic that there wouldn't be a shortfall.

**Q. And you took from that conversation that there wouldn't be a shortfall in customer**

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**property?**

A. Yes.

**Q. And you, therefore, expected --**

A. Well, I took away that at that point, knowing what he knew, that it looked as though there wouldn't be. I wouldn't say -- I wouldn't characterize it beyond that.

**Q. And he didn't tell you to what extent there would be any excess?**

A. We didn't discuss any quantification.

**Q. Did you have any discussions with anyone at the SEC concerning the reserve account or any excess in the reserve account?**

MR. MORAG: Objection, asked and answered.

A. I don't recall.

**Q. Now, you were responding to a Weil question. Was it Harvey Miller who said can we do it?**

A. I believe it was Harvey Miller, yes.

**Q. What he was referring to is the transfer from the 3-3 account?**

A. Yes. He was, he was raising the question as to whether there might be a

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<p>1 ROSEN</p> <p>2 <b>Q. And leaving aside the whole construct</b></p> <p>3 <b>and whole premise, my only question is, you were</b></p> <p>4 <b>not aware of any limitation, even in the</b></p> <p>5 <b>event --</b></p> <p>6 A. I wasn't, I wasn't thinking about all</p> <p>7 of the -- parsing all of the scenarios. There</p> <p>8 was nothing on the face of this agreement that</p> <p>9 to my mind couldn't be accomplished, and from my</p> <p>10 perspective, caveating it with the language "the</p> <p>11 extent permitted by applicable law," even though</p> <p>12 you could argue that that's implicit, was a</p> <p>13 concession that we could readily make in order</p> <p>14 to complete the deal.</p> <p>15 <b>Q. So given that concession, you didn't</b></p> <p>16 <b>think through what would happen if the transfer</b></p> <p>17 <b>left unavailable property for customers?</b></p> <p>18 MR. MORAG: Object to the form.</p> <p>19 A. No, I reject that characterization.</p> <p>20 It was not necessarily the case that there would</p> <p>21 have been any deficit for customers as a result.</p> <p>22 And as a result, because I didn't have the</p> <p>23 information available to evaluate it, I did not</p> <p>24 engage in a hypothetical conjecture as to</p> <p>25 whether -- under what circumstances or set of</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 facts there would be a problem.</p> <p>3 But from my perspective, but for the</p> <p>4 concern, which was really a procedural concern</p> <p>5 as a matter of caution, as I understood it from</p> <p>6 Harvey Miller, I believed that these assets</p> <p>7 arguably were intended to be transferred, were</p> <p>8 intended to be transferred as part of the assets</p> <p>9 of the business.</p> <p>10 <b>Q. In any event, you and the Barclays</b></p> <p>11 <b>side of the house agreed to set aside the cash</b></p> <p>12 <b>issue by taking the billion dollars in cash out</b></p> <p>13 <b>of the deal, correct?</b></p> <p>14 A. By taking the billion dollars out of</p> <p>15 the deal?</p> <p>16 <b>Q. Yeah. The 1 billion dollars in the</b></p> <p>17 <b>bank account was not being transferred as part</b></p> <p>18 <b>of the reserve account?</b></p> <p>19 A. Let me say this. This provision, this</p> <p>20 provision doesn't call for the transfer of that.</p> <p>21 I will leave it to the lawyers to argue what the</p> <p>22 implications of that might be.</p> <p>23 <b>Q. And as to the remaining issue as</b></p> <p>24 <b>raised by Mr. Miller about can we do it with</b></p> <p>25 <b>respect to the government securities, somebody</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 <b>proposed that that issue would be resolved by</b></p> <p>3 <b>inserting the words "to the extent permissible</b></p> <p>4 <b>by law"?</b></p> <p>5 A. My recollection is that that was me.</p> <p>6 <b>Q. Now, did all this happen in a hallway</b></p> <p>7 <b>conversation?</b></p> <p>8 A. Yes.</p> <p>9 <b>Q. Who was present?</b></p> <p>10 A. I don't have a clear recollection</p> <p>11 other than Harvey Miller was there, Vic Lewkow</p> <p>12 was there. I think Dana Fleischman may have</p> <p>13 been there at least for some portion of it. And</p> <p>14 there were others huddling around, but I don't</p> <p>15 have a clear recollection, and to be perfectly</p> <p>16 candid, because I wasn't involved in the</p> <p>17 negotiation of this transaction from the very</p> <p>18 beginning, I was not as -- and I was mostly</p> <p>19 troubleshooting specific issues, particularly</p> <p>20 those relating to the clearing arrangements, I</p> <p>21 was not as familiar with the lawyers from the</p> <p>22 other side, so I could not have readily, as</p> <p>23 readily identified them.</p> <p>24 <b>Q. How long did the, did this hallway</b></p> <p>25 <b>huddling session last?</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 A. I honestly don't know. More than a</p> <p>3 couple of minutes, less than a couple of hours.</p> <p>4 <b>Q. And can you tell me what you recall</b></p> <p>5 <b>being said in the course of this hallway</b></p> <p>6 <b>conversation?</b></p> <p>7 A. Pretty much what I have just described</p> <p>8 to you, that there was a group already there</p> <p>9 when I arrived. I guess some predecessor</p> <p>10 language to this was being reviewed, and Harvey</p> <p>11 Miller, as I said, raised the question whether</p> <p>12 there might be limits under applicable law, and</p> <p>13 I said that I wasn't aware of any, but to the</p> <p>14 extent that they exist, and it would address</p> <p>15 your concern, we can provide that the transfer</p> <p>16 be to the extent permitted by applicable law.</p> <p>17 But if there was such a constraint, that that</p> <p>18 basically 769 million dollars in securities</p> <p>19 would come from somewhere else.</p> <p>20 And can I remember exactly what was</p> <p>21 said, whether it was a grunt or a nod or a</p> <p>22 smile, I don't remember, but I remember coming</p> <p>23 away from the conversation feeling that we had</p> <p>24 sort of resolved the point.</p> <p>25 <b>Q. Who was the person who gave the --</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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1  
2 manifested assent with the grunt or nod or  
3 smile?

4 A. I could be wrong, my recollection was  
5 that it was Harvey Miller, but I could be wrong.

6 Q. Did Mr. Miller agree to your proposal  
7 that "to the extent permitted by applicable law"  
8 would be inserted into the --

9 A. That was my understanding, yes.

10 Q. Did he also agree to avoid the cash  
11 issue by having this provision not call for the  
12 transfer of a billion dollars in cash?

13 A. I believe he did.

14 Q. And did that also happen in this  
15 hallway conversation?

16 A. It may have been two different  
17 conversations or it may have been a continuing  
18 conversation. Again, I was called out to deal  
19 with other issues constantly, issues that were  
20 being dealt with in different rooms and on  
21 different floors, so I don't have a clear  
22 recollection of precisely what the progress, the  
23 progression of discussions were.

24 The cash conversation clearly preceded  
25 this. And there may have been a break before  
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1  
2 this issue, it may have been that drafts were  
3 prepared and exchanged to reflect the first  
4 issue, and then the second issue was raised. I  
5 just don't have a clear recollection of it.

6 Q. We seem to have the cash issue, you  
7 say maybe came up first, and then we have a  
8 second issue is, can we do it, as in  
9 transferring the 769, and that gets resolved  
10 with your proposed language "to the extent  
11 permissible by applicable law," right?

12 MR. HUME: Objection, mischaracterizes  
13 his testimony.

14 A. Do you want to repeat the question?

15 Q. If the first issue is the cash issue,  
16 the second issue is the can we do it question  
17 that Mr. Miller raised?

18 A. Transfer, there was a discussion about  
19 the transfer of securities.

20 Q. Which gets resolved with your proposed  
21 language?

22 A. Yes. And the documentation of it gets  
23 resolved.

24 Q. Do I understand you to be saying there  
25 was also a third issue in that somebody said if

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1  
2 for any reason it is not permissible to transfer  
3 the government securities from the reserve  
4 account, Lehman has to make that up to Barclays  
5 with securities of some other value?

6 A. I'm not sure I would describe it as a  
7 third issue, but as an adjunct to the second  
8 issue, that if the securities, these 769 million  
9 were not available, some other 769 million  
10 dollars of securities would be made available.

11 Q. How did that, whatever you want to  
12 call it, an adjunct to the second issue or a  
13 third issue, how did that issue get raised?

14 A. How did it get raised?

15 MR. HUME: Objection, asked and  
16 answered.

17 A. Someone on our side, maybe me, maybe  
18 somebody else who was there, I don't have a  
19 clear recollection on the second point, but  
20 said, well, if there is any contingency to the  
21 769 from the 3-3, we get them from somewhere.

22 The whole purpose of this, again, was  
23 to say -- we were identifying a source of value  
24 that was in the deal in the light of other  
25 evaporating value, and so it was important to

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1  
2 the Lehman side -- I am sorry, it was important  
3 to the Barclays side that if this wasn't  
4 available, some other asset would be available.

5 Q. Was there any discussion about the  
6 implications for customer property claims --

7 A. No, there was no discussion about  
8 customer property claims.

9 Q. And there was no discussion of the  
10 implications on customers of transferring 769  
11 million --

12 A. None of us, none of us on the Barclays  
13 side had anything like the information that  
14 would have been necessary to evaluate that, to  
15 even raise questions about it. That information  
16 was not available, and there was no way for it  
17 to become available and to be discussed and  
18 analyzed in a time frame that would have enabled  
19 the deal to close.

20 MR. MORAG: Let him finish the  
21 questions.

22 Q. Can you tell me -- you came away from  
23 this meeting with an understanding that Harvey  
24 Miller or someone on the Weil side had  
25 manifested assent to the proposition that if the

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1 ROSEN  
2 government securities in the reserve account  
3 weren't available, some alternative similar  
4 securities would be provided.  
5 Can you tell me, how are you -- how do  
6 you know that Mr. Miller or his colleague was  
7 agreeing to that unconditional transfer as  
8 opposed to his nod, his grunt, his smile,  
9 whatever you recall, meaning nothing more than  
10 this conversation is at an end or that we agree  
11 to your proposed language "to the extent  
12 permitted by applicable law"?  
13 MR. MORAG: Object to the form.  
14 A. I don't think I have more to add, more  
15 than what I have already said, except to say  
16 that a draft was provided to us by Weil that  
17 reflected that agreement.  
18 Q. You got a draft from Weil which  
19 provided that Barclays -- that Lehman would  
20 transfer to Barclays 769 million from the  
21 reserve account or securities of a substantially  
22 similar nature. Are you aware of that?  
23 A. I recall that.  
24 Q. What was the reaction on the Barclays'  
25 side when you got that draft?  
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1 ROSEN  
2 assumption.  
3 Q. Did you have any discussion with Weil  
4 about that draft and specifically about those  
5 words in that draft?  
6 A. Yes, in the sense that we provided a  
7 markup of it with the words "or value," and that  
8 seems to have been accepted as an appropriate  
9 clarification of the agreement that we had  
10 reached earlier and reflected in the next  
11 turnover of documents.  
12 Q. Any communication between the Cleary  
13 and the Weil folk, other than --  
14 A. Yes. The language "or value," which I  
15 think speaks for itself.  
16 Q. I'm just saying, anything beyond that?  
17 A. I don't think there needed to be  
18 anything beyond that.  
19 Q. And have you heard from your partners  
20 whether they are aware of anything beyond that?  
21 A. I don't have a recollection of  
22 discussing it.  
23 MR. HUME: Are you going to finish  
24 before lunch or should we take a break for  
25 lunch or take another break? Either way I  
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1 ROSEN  
2 A. We didn't know what "or nature" meant  
3 and whether it was clear that it meant that they  
4 would be of equivalent value. So we added the  
5 words "or value." I believe I may have made  
6 that change.  
7 Q. Did you have any discussion with  
8 anyone at Weil to find out what they meant by  
9 adding the words "substantially similar,"  
10 without the words "in value"?  
11 MR. MORAG: Objection, foundation.  
12 You have not established that Weil added  
13 these words as opposed to mistyped or didn't  
14 type the Cleary proposal.  
15 Q. Well, let me back up. I thought you  
16 said you were provided with a draft from Weil  
17 that included the words "substantially similar  
18 nature"?  
19 A. I believe I was shown a draft that  
20 included that language, an interim draft that  
21 included that language.  
22 Q. Do you know who provided you that  
23 draft?  
24 A. I don't have a clear recollection, but  
25 my assumption is it was Weil. That's my  
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1 ROSEN  
2 think we can use another break. We have  
3 been going for an hour and a half.  
4 MR. MAGUIRE: Why don't we take a  
5 break, and if lunch is ready, this is a fine  
6 time for lunch. I certainly will continue  
7 after lunch.  
8 MR. HUME: You will.  
9 MR. MAGUIRE: Yes. I still have quite  
10 a bit to go.  
11 (Recess)  
12 BY MR. MAGUIRE:  
13 Q. Sir, before the break, you were  
14 describing the hallway conversation at Weil  
15 Gotshal's offices concerning the 3-3 account,  
16 and I note that is a subject of paragraph 7 of  
17 your declaration; is that correct?  
18 A. Yes.  
19 Q. In paragraph 7, and you don't refer to  
20 the contingency that you described in your  
21 testimony earlier today concerning what would  
22 happen if Barclays did not get or Lehman could  
23 not transfer government securities from the 3-3  
24 account. Do you see that?  
25 A. Um-hm.  
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Q. Can you tell me why you did not refer to that contingency in your declaration?

A. No.

Q. Earlier in your declaration, in paragraph 5, you refer both to the removed language that we have discussed earlier, the language that starts, "any and all property" -- you remember that? -- and also to the parenthetical that ultimately ends up being inserted in the clarification letter, that's a parenthetical that reads, "and any property that may be held to secure obligations under such derivatives."

A. Correct.

Q. Can you tell me why when you posed the parenthetical, you didn't simply put the earlier language in the parenthetical?

A. The only reason is that it was -- the original language had been obviously subject to modification, and I didn't want to get embroiled -- we didn't have time to get embroiled in sending back language and having extensive negotiations.

So the purpose of doing it this way

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was to do it as simply and clearly as possible and not resurrect language that might have been -- for other reasons raised issues in people's minds for reasons unrelated to the point that was intended to be conveyed here, clarified here.

Q. By inserting the parenthetical, did you mean anything different from what you say in your declaration, paragraph 5 was documenting the business deal?

MR. MORAG: Object to the form.

Q. In other words, did you mean anything different in the language in the parenthetical from the earlier language that had been removed?

MR. HUME: Objection, I think you are really calling for him to interpret the contract now.

MR. MAGUIRE: No, no, I am asking what he meant at the time.

A. What I will say is that I meant to express the thought reflected in the markup, but I didn't parse, because I didn't have time to parse the differences in the wording. And this was intended to pick up everything in a shorter

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and more concise formulation.

Q. Do you know how much in value terms this parenthetical picked up?

MR. MORAG: Objection to the form.

Q. In other words, do you know how much property there actually was that was held to secure obligations under such derivatives?

MR. HUME: The question is whether he knows today?

Q. Did you know at the time what the dollar amount of that was?

MR. MORAG: And I object, lack of foundation.

Go ahead.

A. I did not know the precise number, no.

Q. Did you have a general understanding?

A. I would have assumed it was a significant amount of, significant amount of money. Lehman was a very significant, one of the largest investment banks. They had a very significant business, and I would have assumed that with a significant business would come significant customer property to margin the proprietary and customer activities that were

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going on.

So the bigger it was, the more concerned I was about it.

Q. Did you understand that the customer margin was in the billions of dollars?

A. I didn't have specific knowledge of it, but it wouldn't surprise me to hear that. I expected it to be a large number.

Q. Did you understand what the proprietary margin was that was in the billions of dollars?

A. I would have expected it to be of that kind of magnitude, but I didn't know exactly what it was.

Q. Do you know whether the folks at Weil had an understanding as to how much property was picked up by the parenthetical?

MR. MORAG: Object to the form and foundation.

A. All I'll say about that is that they had more ready access to that information through their client than we had.

Q. What about the trustee, do you know whether the trustee had any knowledge about the

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**amount of the property that was the subject of that parenthetical?**

A. I can't speak to the state of mind of the trustee, but I assume that as part of this, the trustee was looking at what was there.

**Q. Is your answer the same with respect to the creditors committee?**

A. I've had no direct interaction with them, the creditors committee, such that I can recall.

MR. MAGUIRE: We will mark as Exhibit 623 a document dated September 19, 2008, Bates stamped GCGSH0002699 through 700.

(Exhibit 623, document Bates stamped CGSH0002699 through 700 marked for identification, as of this date.)

A. Can I back up a second to your previous question? In terms of what the trustee and Weil knew about the amount of the margin, they would have known -- they were copied on e-mails which -- from OCC just in the context of OCC that suggested that just the pays and collects from -- for the Monday would have been

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on the order of several hundreds of millions of dollars, which would have suggested an extraordinarily large amount of positions and therefore margin associated with them.

So they could have inferred that it would be an extremely significant amount of margin.

**Q. When you refer to the pays and collects, what are you referring to?**

A. The accounts are marked on a periodic basis by the clearinghouse, and it was sort of what additional flows are coming in or going out between the clearinghouse and the clearing member as a result of the changes in the marks or the exercises of contracts or whatever other activity is being conducted in the account.

**Q. And what's a pay?**

A. Well, it depends on what your perspective is, but some amounts are paid by the clearinghouse to the clearing member, and there are amounts that are paid, so if you are receiving the funds, you are the collect, and if you are paying the funds, you're the pay.

**Q. Do you know whether the trustee or**

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**Weil actually received any information concerning pays or collects at the OCC prior to the closing?**

A. I believe they were copied on e-mail correspondence from the OCC, but that may be a misrecollection, but I believe there was a lot of correspondence including another e-mail that referred to a billion dollars and that confirmed that OCC was going to transfer all of that to Barclays, as we would have all expected.

**Q. And did you receive any response to Exhibit 623?**

A. I don't have a clear recollection of a specific response to this except that the SEC, after this interim exchange of communications regarding DTCC, stepped up to support the transaction, so presumably if they had had a problem, they would have raised it in connection with their support of the transaction.

**Q. We will mark as Exhibit 624 a document Bates stamped DTCC 00126 through 00198.**

(Exhibit 624, document Bates stamped DTCC 00126 through 00198 marked for identification, as of this date.)

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**Q. Is this an e-mail you received from DTCC on or about September 20, 2008?**

A. Appears so.

**Q. It is a lengthy document. I am really going to ask you only about one of the attachments, the contents.**

MR. MORAG: Just for the record, there do appear to be other e-mails starting at page 180 that may or may not be part of this. Since they are dated later, I don't know that they could have been part of the original e-mail.

**Q. I'm not going to ask you about anything after 178. But if you could take a look at the pages that begin 175.**

A. Um-hm.

**Q. You will see on page 176, the first paragraph concerns assumption of accounts.**

A. Right.

**Q. Was there at one point in time a discussion whereby Barclays was assuming the DTC -- the Lehman accounts at DTCC?**

MR. MORAG: Object to the form.

MR. HUME: Object to the form.

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<p>1                   <b>ROSEN</b></p> <p>2           A. He conveyed Barclays' reluctance to</p> <p>3           assume the obligation to provide any form of</p> <p>4           guarantee beyond the 250 million dollars</p> <p>5           representing the holdback of that payment that</p> <p>6           would otherwise have been made to Lehman under</p> <p>7           the APA, and there would have been -- there was</p> <p>8           a call -- there was a point at which he said, he</p> <p>9           conveyed to DTCC that because Barclays was not</p> <p>10          willing to accept more liability than that, they</p> <p>11          would not be accepting the transfer of those</p> <p>12          accounts.</p> <p>13          <b>Q. Anything else you remember Mr. Cox</b></p> <p>14          <b>saying in any of the Sunday night calls?</b></p> <p>15          A. I really don't recall specifics.</p> <p>16          There was undoubtedly a lot more discussed and a</p> <p>17          lot more give and take, but candidly, I cannot</p> <p>18          remember the specifics of the dialogues. There</p> <p>19          would have been conversations about, gee, does</p> <p>20          DTCC really need all the credit support that it</p> <p>21          is asking for, can't it get comfortable, it has</p> <p>22          better access to the information than Barclays</p> <p>23          does. It would have been of that nature, but I</p> <p>24          just, sitting here now, can't recall the</p> <p>25          conversations.</p> <p>          TSG Reporting - Worldwide   877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2           <b>Q. Anything you recall Jonathan Hughes</b></p> <p>3           <b>saying?</b></p> <p>4           A. Not really. I don't have a specific</p> <p>5           recollection. I think -- I'm sure that he</p> <p>6           reiterated or articulated many of the same</p> <p>7           themes as Archie Cox, because the Barclays view</p> <p>8           was, at that point, pretty well settled that</p> <p>9           they were not prepared to assume additional</p> <p>10          potentially substantial liabilities.</p> <p>11          <b>Q. Anything you recall Mr. Hughes saying</b></p> <p>12          <b>beyond what you said?</b></p> <p>13          A. Not specific words, no.</p> <p>14          <b>Q. Anything you recall Michael Klein</b></p> <p>15          <b>saying?</b></p> <p>16          A. No.</p> <p>17          <b>Q. Anything you recall Mr. Larocca</b></p> <p>18          <b>saying?</b></p> <p>19          A. Well, there were a lot of</p> <p>20          conversations also about sort of the pipes and</p> <p>21          the plumbing and sort of the operational aspects</p> <p>22          of what was going to be the mechanism for DTC</p> <p>23          to effect the transfers of securities that needed</p> <p>24          to be effected as part of the transactions, what</p> <p>25          accountant are they going to go to or through,</p> <p>          TSG Reporting - Worldwide   877-702-9580</p>
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<p>1                   <b>ROSEN</b></p> <p>2           or how that was going to be hooked up or</p> <p>3           handled, but I was not focused on those because</p> <p>4           I regarded them as essentially operational</p> <p>5           matters.</p> <p>6           <b>Q. Was that an issue that was in</b></p> <p>7           <b>Mr. Larocca's purview?</b></p> <p>8           A. Yes, I think so -- yes.</p> <p>9           <b>Q. Did he speak to that?</b></p> <p>10          A. He did, and he may have delegated some</p> <p>11          of the details of it to people who reported to</p> <p>12          him.</p> <p>13          <b>Q. Do you recall Mr. Larocca saying in</b></p> <p>14          <b>any call on Sunday night or early Monday morning</b></p> <p>15          <b>we are not taking anything?</b></p> <p>16          A. I do not recall Gerard Larocca saying</p> <p>17          that or anyone else saying that, because it</p> <p>18          was -- the whole purpose of the DTC endeavor was</p> <p>19          to resolve their concerns in a manner that would</p> <p>20          enable them to effect the transfers of assets</p> <p>21          that were necessary to consummate the deal. So</p> <p>22          it would have been a ludicrous thing for anyone</p> <p>23          to have said, because otherwise, why did we need</p> <p>24          to be dealing with DTCC?</p> <p>25          <b>Q. Was anyone from DTCC present for any</b></p> <p>          TSG Reporting - Worldwide   877-702-9580</p>	<p>1                   <b>ROSEN</b></p> <p>2           <b>of these discussions?</b></p> <p>3           A. These -- they were on the phone.</p> <p>4           There was nobody from DTCC in the room at Weil's</p> <p>5           offices.</p> <p>6           <b>Q. Who did you understand was</b></p> <p>7           <b>participating from DTCC?</b></p> <p>8           A. My understanding was that it was Larry</p> <p>9           Thompson, the general counsel; his deputy, Isaac</p> <p>10          Montal, Shelly Hirshon, their outside counsel,</p> <p>11          and Don Donahue, the chairman of DTCC, at least</p> <p>12          at some -- at least in some portions of the</p> <p>13          conversation.</p> <p>14          <b>Q. And who was the person who did most of</b></p> <p>15          <b>the talking for DTCC?</b></p> <p>16          A. My recollection was that it was Larry</p> <p>17          Thompson.</p> <p>18          <b>Q. Did you understand at some point, DTCC</b></p> <p>19          <b>was considering issuing a cease to act with</b></p> <p>20          <b>respect to Lehman?</b></p> <p>21          MR. MORAG: Object to the form.</p> <p>22          A. After Barclays had conveyed to DTCC</p> <p>23          that Barclays was not going to accept a transfer</p> <p>24          of the accounts, I believe Larry Thompson</p> <p>25          indicated -- and I don't recall exactly when</p> <p>          TSG Reporting - Worldwide   877-702-9580</p>

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this was -- that they would issue a cease to act, which meant that once the pipeline and these transactions were transferred, DTCC would be liquidating positions and closing out the account and not accepting any other transactions.

And I received a call from Don Donahue to say, you know, if we could avoid doing that, they would prefer to do that, because they hadn't done it before, and which I told him I would convey to the client.

**Q. Do you have an understanding of what the consequences would be for the transaction if the DTCC were to issue a cease to act notice?**

MR. MORAG: Objection to form.

**A. My understanding is that it wouldn't have affected the transaction.**

**Q. Did you have any discussion with anyone as to whether Barclays could or would close the transaction if DTCC issued a cease to act notice?**

MR. MORAG: Again, Mr. Rosen, if your discussions are with anybody outside of Barclays, you can answer. Not -- if not,  
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say you are not able to answer.

A. Would you mind repeating the question.

**Q. Yes. The question is whether you had any discussion, any conversation with anyone about whether Barclays could or would close the transaction if DTCC were to issue a cease to act.**

MR. MORAG: Do you have a time frame on when the issuance was supposed to be?

A. It really --

**Q. Yes, the Sunday.**

A. Can I just -- let me just say this.

It really depends. Your question presupposes with respect to what point in time the cease to act would take effect.

If -- I did have a conversation with Shari Leventhal at the Fed, which the substance of which was that I expressed my concern that we were not making rapid progress in the negotiations with DTCC toward a resolution in which they would accept a much more limited amount of credit support, and I was worried that we were running out of time, and we thought that it might be helpful to let the Fed know, that we  
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didn't want the Fed to find out at the last minute that this thing was falling apart for reasons unrelated to, you know, the actual negotiation of the deal, that because of a problem with DTCC.

So I spoke to Shari Leventhal and said, if we can't reach a resolution with DTCC and DTCC does not agree to process the transactions, absent other arrangements, we are not going to be able to close this, at least in the manner in which we had contemplated.

And I did have that conversation with her.

**Q. Can you help me out and explain, because I thought you had told us that a cease to act from DTCC would not have affected the transaction, but I thought you also told us --**

**A. I also told you it depends at what point they are ceasing to act. And if they cease to act following the processing of the transaction and the transactions that are in their pipeline, we would have been able to close the transaction. If they said as of Saturday, we are ceasing to act and we are not going to**

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**accept any other instructions on Monday to transfer customer or proprietary agents, that would have been a very different result than the one which ultimately obtained.**

**Q. And when you told us earlier that after Barclays had made clear it was not accepting the transfer of accounts and Larry Thompson responded that DTCC would issue a cease to act, what did you understand the timing of that notice that he was talking about to be?**

**A. My understanding was that DTCC was going to issue a cease to act after processing trades in the pipeline, including the transfers that were necessary to implement the deal, and that there had been operational calls, my understanding was to sort of discuss the plumbing and how you accomplish that.**

**Q. So Mr. Thompson was simply telling you that they would issue a cease to act after clearing all the pipelines, all the uncleared trades after the closing?**

**A. Yeah, I didn't think -- I did not understand him to be saying -- well, I'm going to add some clarification to this. There was a**

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point at which we were not, we did not have a meeting of the minds with DTC about what, in addition to 250, Barclays might make available, and DTC, DTCC was not, had not yet agreed to accept only the 250 million, so you had two parties who were -- who lacked a meeting of the minds.

In that context, Larry Thompson may well have said basically, you know, if we don't get what we want, we are just going to cease to act and you are going to have to figure things out for yourself. That was some of the need to deal with that issue, so we could close expeditiously and not have to create some kind of a work-around, was precisely why we continued the negotiations until DTCC would be willing to process the transactions that were in the pipeline and transactions that are associated with this deal.

**Q. Was that comment by Mr. Thompson about what they would do if they didn't get what they wanted, was that in response to hearing from Barclays that Barclays was not accepting transfer of the accounts?**

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A. Again, you have got to focus on the time. I think at some point it was made clear that not having the credit support meant that after the cease to act, when a meeting of the -- when DTCC agreed that on the understanding that it was going to get the 250 million in credit support but no more, the fact that they would have to cease to act was never presented by him as, you know, something that would have precluded the very reason that we were having the negotiations, in order to enable the transaction to close by processing and making the transfers.

**Q. Let me try --**

A. You couldn't accept a transfer of customer accounts and get that business if the accounts couldn't be -- and the assets in them couldn't be transferred by DTCC. Everybody realized that they had to agree to do that and not shut the pipes down.

**Q. Yeah, I'm not interested in what would or could have happened. I want to get the sequence of your recollection down right.**

**I understand that on Sunday night at**  
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some point, Archie Cox described to DTCC Barclays' reluctance to assume the accounts and made plain that Barclays was not accepting the transfer of the accounts of DTCC?

A. Yes.

**Q. That's correct?**

Now, what was -- in response to that, did Mr. Thompson say in words or substance if DTCC can't get happy, it will issue a cease to act?

A. I don't recall it being specifically in response to the -- you know, the articulation of the final position or whether it occurred in the course of earlier assertions of the position. But it was clear in their minds that if they didn't have a -- if they did not have adequate credit support or a viable creditworthy clearing member, that they were not going to take the risk of just carrying the accounts open and continuing to accept positions. They would have to go through the process that they described as ceasing to act.

**Q. And they made that clear to Barclays?**

A. Yes.

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**Q. Can you tell me, what happened or what was the event that triggered the decision by Barclays that it would not accept a transfer of accounts at DTCC?**

MR. MORAG: I caution you from disclosing any privileged communications.

A. Can I consult on the privilege question?

**Q. Sure.**

(Recess)

**Q. Would you like the question, sir? Can you tell me what happened or what was the event that triggered the decision by Barclays that it would not accept a transfer of accounts at DTCC?**

A. After the report from the operations team, of the operations team to their principal, their principals, Archie Cox, the decision was made that they would not -- they would not accept the possibility of liabilities in excess of 250 million dollars, and they confirmed to DTCC that they were firm on their position they weren't going to accept the accounts.

**Q. When was the report of the operations team received?**

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A. Other than that it was earlier in the evening on Sunday, but possibly late, I don't have a specific recollection.

**Q. Do you have any sense of the timing as to when a decision was made by Barclays that it would not accept any liabilities beyond the 250 million?**

A. Well, I think internally they had reached that position -- we were trying in good faith to see whether they could get enough information to make them comfortable, but it was finally communicated that they were firm on the 250 and not accepting the accounts, maybe like 11 o'clock, something like -- it was quite late on Sunday night.

**Q. And was that Mr. Cox who conveyed that to DTCC?**

A. I believe so, I believe so.

**Q. Was Larry Thompson on the call in which --**

A. I believe so.

**Q. He was?**

A. I believe so.

**Q. Did Mr. Thompson make a reference to**

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**issuing a cease to act on that call?**

A. I don't recall him specifically making a reference at that time in response to it. But to be clear, the understanding was that the cease to act was not in respect of the processing of any of the transactions that -- any of the -- processing any of the transfers that were part of the transaction.

**Q. Now, when did you have the call with Shari Leventhal?**

A. Earlier in the evening. Whether it was at 5 o'clock or 8 o'clock or 9 o'clock, I don't honestly recall.

**Q. Did you have any follow-up call with her?**

A. I don't recall that I had a follow-on, one-on-one call with Shari. It's possible that I did, but they were on the open line which was established for the purpose of reporting to all people who needed to know simultaneously, because we were under a very tight time frame, sort of what was open and what was being agreed.

There was an open line with the Fed and the SEC and other interested parties, and I  
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believe that at least at some point, she was on to hear the results of the negotiations. She may have gotten information from DTCC, I just don't recall specifically.

**Q. Can you tell me what else you recall Larry Thompson saying in the various conversations on Sunday night?**

A. For the most part, I recall him justifying their need for collateral in excess of the 250 million dollars. That was the point at which they were willing to go forward on that basis.

**Q. How did he justify that?**

A. That they were -- his team, you know, were concerned about the risks.

**Q. Do you recall anything specifically said about the risks?**

A. Mostly my recollection is, you know, there is uncertainty, there is a lot in there to do, it would take time, we can't know exactly what the results of the liquidations will be. I mean they are a clearinghouse, they are a conservative organization, and they viewed the risk conservatively.

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**Q. Do you recall him saying anything further about a cease to act other than what you have told us?**

A. Nothing beyond what I told you.

**Q. Do you recall saying, addressing specifically the subject of whether the -- of when the cease to act would take effect and the impact that it would have on the transaction or on the unsettled trades that were at DTCC?**

MR. MORAG: Objection, asked and answered.

A. He never suggested that there would be any impact as the transaction was resolved. The purpose of the resolution was that there would be no impact.

**Q. Did he ever address whether the cease to act would have an impact on outstanding unsettled trades?**

A. Mostly what I recall him focusing on was they don't like to cease to act because it means that other participants in the marketplace aren't going to receive the benefit of the processing that they would otherwise do when those transactions came in, and hadn't had to do

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it in the past.

My impression was that they were more concerned about the public relations implications of a clearing corporation doing that than they were focused on any impact on us, because it was a mutual premise that the purpose of this was to enable us to close and process the transactions.

**Q. Did he ever say anything to indicate that his references to cease to act related exclusively to a notice that would come into effect after the closing and after all of the unprocessed, unsettled trades of Lehman had been cleared by DTCC?**

MR. MORAG: Object to the form.

A. I think in going over the terms of the arrangements it was clear that the transactions that were the subject of the acquisition, those transfers were going to be made, and I don't think there was any implication of any kind, it would have been absurd for there to have been an implication that we reached an agreement with DTC and by the way, they were going to not process the transactions.

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**Q. Let me ask you about the time period prior to reaching a meeting of the minds with DTCC. At any time before that, did he give any representation or assurance to Barclays that while DTCC might issue a cease to act, it would not affect the transaction, and that they would honor and process all unsettled trades? Did he say that in words or substance?**

A. I am sorry, can you repeat that.

**Q. Yes. At any time prior to the meeting of the minds between Barclays and DTCC, did Larry Thompson in words or substance say, we may have to issue a cease to act, but it will not affect the transaction, and notwithstanding our cease to act, we will make sure that it takes effect only after all unsettled trades have been cleared?**

A. No. I think that if the -- if we hadn't reached an agreement with DTCC, then we had, we had the prospect of having to figure out another way of consummating the transaction if they were not going to process trades, and basically what DTCC was saying was that if they were going to continue to process trades and act

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for these accounts, then they wanted more credit support than they would have if they were left to look only to the assets of LBI.

**Q. Is there anything further you recall Larry Thompson saying on the Sunday night other than what you have told us?**

A. I'm sure there is a lot more that could be said. I just don't have a specific recollection of that.

**Q. And all my questions are just to your recollection.**

**What about Mr. Montal? Do you recall anything that Mr. Montal said in any of the conversations on Sunday night or early Monday morning?**

A. He was not a prominent speaker, at least while I was in the room.

**Q. Anything that you recall?**

A. I don't have a specific recollection of what he might have said.

**Q. What about Shelly Hirshon?**

A. I don't remember Shelly Hirshon speaking of it.

**Q. You did tell us about Don Donahue**

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**making a call to you. Anything else that you recall hearing from Dan Donahue on the Sunday night?**

A. No. No more than that conversation.

**Q. I have been asking you now about the conversations with DTC for some time limited to the Sunday night, and I know that there were conversations that may have spilled over into the wee hours of early morning. So if we include Monday morning, are there any conversations by any of the participants that you recall that you haven't told us about?**

A. I have a vague recollection that there may have been continuing discussions on the operations side in anticipation of the closing of the transaction, and the balance of the exchanges were between the lawyers trying to reflect what had been agreed in I think what's become or been referred to as the DTCC letter.

**Q. And anything else, if you recall?**

A. Not that I specifically recall, sitting here.

**Q. We will mark as Exhibit 625 a document Bates stamped DTCC 00359 through 361.**

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(Exhibit 625, document Bates stamped DTCC 00359 through 361 marked for identification, as of this date.)

A. I recall this.

Q. If you look at the e-mail at the top, the first page, sir. Can you tell me what you meant when you said, "The obligations and entitlements in relation to the funds run between DTC and the LBI estate, not between Barclays and DTC"?

A. Because the credit support was going to be limited to the 250 million dollar cash payment, we thought that since we could direct that payment, I thought that since it was possible to direct that payment on Lehman's behalf, so that the DTC got hold of it, it was -- as far as the transaction was concerned, that was an asset of -- that would otherwise have been an asset of the estate that was being made available to provide credit support, and since it would otherwise have been an asset, that the arrangements relating to that were between Lehman and DTC and didn't need to be between Barclays.

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So my feeling was that to keep things simple, we didn't really need to have a separate agreement.

Q. Let me show you a document that's previously been marked as Exhibit 606.

While we are waiting for that, sir, how did the impasse between Barclays and DTC get resolved? How did the parties reach a meeting of the minds?

A. There were conversations staking out positions. The parties would go off. There was due diligence being done on both sides, because both sides wanted to know what the risks were, and they would get back on the telephone, and at some point, DTC decided that the position that had been articulated by Barclays was acceptable to it.

Q. So DTC had previously refused to accept Barclays' position of limiting the recourse to 250 million, but it changed its mind at some point on the Sunday or early Monday?

A. Until late on Sunday night, DTC had not signaled its agreement to go forward based on the 250 million dollars.

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Q. How did DTCC signal its agreement?

A. On a conference call, it -- Larry Thompson said, we are willing to go forward on this basis.

Q. And what was the specific thing he said with respect to the basis?

A. That Barclays would not be assuming the accounts and that the credit support that would be made available would be limited to the 250 million dollar holdback on the purchase, on the 250 million dollars.

Q. Is that something that you recall Larry Thompson specifically saying?

A. I could be wrong, but that's my recollection. My recollection is that Larry was largely the spokesperson for DTC.

Q. And did Larry explain what prompted DTCC to change its position?

A. No. I don't recall -- I don't recall having an explanation from him.

Q. Did you have any understanding as to what prompted DTCC to change its position?

A. I assume that -- all I can say is that I assumed with more time, they got a better

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understanding of what the assets and the risks were, and assumed that they decided that would be acceptable for them, to take the liquidation risk with the assets that they had in the 250 million.

But he didn't give us a quantitative -- he didn't share his quantitative analysis of their evaluation of that risk, nor did we expect them to.

Q. When did this meeting of the minds conversation happen?

A. It was very late on Sunday night. Sometime before midnight, I think.

Q. Do you know whether it was before midnight or after midnight?

A. I would have to refresh my recollection.

Q. How would you do that?

A. I would look at the e-mail traffic.

Q. Anything else?

A. I think that is all that I would have available to me today to help.

Q. I show you a document previously marked as Exhibit 606. Sir, you received this

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e-mail?

A. Yes.

**Q. Does it -- do you see the reference to "earlier this evening," the first line? Does that refresh your recollection as to -- the first line of the e-mail, cover e-mail, does that refresh your recollection as to when the agreement was reached?**

A. Well, I know it was before 3:43 a.m. How much before -- I remember we felt that we tended to wait a long time to get drafts back from the other side, but I don't recall.

**Q. Who prepared this draft?**

A. This was -- it appears to have been prepared by DTC or its counsel, but I don't know specifically.

**Q. Did you have any discussions with DTCC or its counsel anytime after receiving this e-mail?**

A. Most of the direct negotiations regarding this were conducted by my partner Mike Mazzuchi. I did exchange e-mails including, I guess it was slightly earlier in the evening, with Sheldon Hirshon. There may have been later  
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e-mails exchanges, I don't recall.

**Q. Leaving aside e-mails, do you know whether Mike Mazzuchi had discussions with anyone at DTCC after circulating or the circulation of this draft that has been marked as Exhibit 606?**

A. Well, with their counsel, certainly. I don't recall whether or not he was, he had conversations that included individuals from DTCC.

**Q. Do you know what conversations he had with their counsel?**

A. Other than to discuss changes to this document prior to its finalization, I don't.

**Q. And do you know whether there were in fact discussions as opposed to e-mail exchanges?**

A. I don't -- I think it was principally exchanges of drafts. It was very late and people were very tired.

**Q. If you turn to paragraph 1, sir, the winding down of accounts. Did you review this at the time?**

A. I don't recall specifically whether I looked at this draft or a subsequent draft.

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**Q. Did you understand that, at the time this draft was received, that there was an agreement, a meeting of the minds between Barclays and DTC whereby all of the assets in the Lehman accounts at DTC were going to go to Barclays and the accounts themselves were going to stay at DTCC?**

MR. MORAG: Object to the form.

A. Could you repeat the question.

**Q. Did you have an understanding at the time you received this e-mail that there had -- there was an agreement, a meeting of the minds between Barclays and DTCC?**

MR. MORAG: That's the only question?

MR. MAGUIRE: Yes.

A. Yes.

**Q. And did you understand that that agreement involved the accounts, the Lehman accounts staying at Lehman and at DTC?**

A. Yes.

**Q. Did you understand what was happening to the assets in those accounts?**

A. Insofar as Barclays was concerned, our understanding was that the assets, whether they

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were proprietary assets or customer assets that under the deal terms were to be transferred, would be processed.

**Q. And once those transactions were all processed, who owned the assets in the Lehman accounts at DTCC?**

A. The residual assets that were not to be -- whatever we didn't -- whatever Barclays didn't buy or acquire was part of the Lehman estate.

**Q. Did you have an understanding as to whether Barclays was acquiring any of the assets at the -- in the DTCC clearance boxes?**

A. Yes. Yes, my understanding is that they were acquiring those assets.

**Q. And so that at the closing, those assets would then belong to Barclays?**

A. Contractually, yes, at the closing there would have been an agreement to transfer them to Barclays, an understanding that those transactions would be processed by DTCC and not be subject to a cease to act.

**Q. And was that explained to the DTCC, that the assets in the Lehman accounts would**

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**contractually belong to Barclays at closing?**

A. The DTCC was provided at their request a draft of the agreement that reflected the -- what do you call it? -- that reflected the agreements to transfer the clearance box assets as part of the deal.

**Q. A draft of the clarification letter?**

A. A draft of the letter, right.

**Q. Other than providing the DTCC with a draft of the clarification letter, did anyone on the Barclays side explain to DTCC that the assets --**

A. I believe that that was the subject of discussions on an operational level, because they wanted to impose a cease to act at some point, and they had to figure out a way to effect the transfers and do whatever else that they wanted to do under their rules.

**Q. Did you participate in any of the operations conversations in which anyone from the Barclays side explained to anyone on the DTCC side that all of the assets at, in the Lehman accounts at DTCC were being acquired by Barclays?**

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A. No, I don't think that I said that all of the assets in those accounts were being acquired. There are some assets that were being acquired, some assets that were not being acquired. There were customer accounts that were being transferred and presumably other customer accounts that were not part of the deal. I mean customer securities.

That was dealt with in the clarification letter. What Lehman was and was not selling to Barclays was not the subject of the DTCC letter. The DTCC letter from the beginning was about financial responsibilities to DTCC for the liabilities associated with those accounts.

**Q. And did anyone explain to DTCC that Barclays understood there to be a distinction between the accounts and the assets in the accounts?**

A. It would have been an absurd conversation to have with a clearing corporation, because a clearing corporation is basically structured fundamentally on the premise that there is a difference between legal

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ownership and responsibility for accounts and beneficial ownership and entitlement to the assets in the accounts.

Without that distinction, every person who owns a security in the United States in order to own it would have to be a clearing member of a clearing corporation, which is not how we would realize our financial markets.

**Q. You are not aware of any conversation between anyone at Barclays, working for Barclays, and anyone at DTCC concerning any distinction between the Lehman accounts and the assets in the Lehman accounts at DTCC?**

MR. HUME: Objection, asked and answered.

A. I don't have anything to add.

**Q. Did it come to your attention that DTCC was of the understanding that the assets in the Lehman account were remaining with the estate?**

A. It is impossible for me to understand how they could have formed that view or that they -- and I am unaware that they did form that view.

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**Q. If you look, sir, at paragraph 1 of the draft before you marked as Exhibit 606, you will see the second part of that section 1, same paragraph really of that section 1, says, "As part of this closeout process, the trustee hereby authorizes DTC to accept and act upon instructions from NSCC to deliver securities from the DTC LBI account to NSCC's account," and it goes on. Do you see that sentence?**

A. I do.

**Q. Can you explain why the parties were providing for the trustee to exercise authority over assets in the Lehman account if those assets contractually were understood all along to belong to Barclays?**

MR. MORAG: Objection, mischaracterizes his testimony. For the third time.

A. And I think you're asking me to interpret what the import of this is, because I don't accept your characterization of what this does or -- what this provision does or says.

**Q. So you would --**

A. I think I would decline to answer on

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the grounds that I think my interpretation of this provision would be privileged.

Q. At the time that this draft was received, did you understand that Barclays was taking -- was cherry picking or at least taking certain assets from the clearance box and not other assets, or at least that it had that option?

MR. MORAG: Objection, compound.

A. Why don't you ask the first question.

Q. Sure. What I am trying to understand is, at the time that this draft is circulated, what is your understanding of the business deal between Barclays and the estate?

A. I was not -- I was not aware -- I don't know it to be the case, sitting here today, that there were clearance box assets that Barclays had decided they didn't want.

Q. Did you understand that Barclays had the ability to either return or not take certain clearance box assets?

A. I'm not sure at that time that I had focused on the language that you showed me earlier today.

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Q. Did you raise any question with DTCC or anyone else as to why there was not any mechanism here for separating out the assets that were being taken by Barclays and the assets that Barclays did not choose to take from the DTC clearance boxes?

A. No, because at that point, I was under the impression that Barclays was taking all of the clearance box assets, which it was their ability to do or not do, as they decided at any time. I think there was a lack of -- I don't know how clearly it was understood what all of those assets were.

Q. I'll show you next a document that has been marked as Exhibit 607.

MR. HUME: How much more do you have?

And would it make sense to take a break at some point afternoon then finish?

MR. MAGUIRE: I can finish this in five minutes and that might be a better time to take a break.

Q. This is an e-mail that your colleague, Mr. Mazzuchi circulated?

A. Um-hm.

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Q. I note in this draft and the prior draft, there is a signature line for James B. Giddens as trustee for the liquidation of Lehman Brothers. And the signature line is for James B. Kobak, Jr. Do you see that?

A. Um-hm.

Q. Did you have any discussions with Mr. Kobak concerning this agreement?

A. I did not have a verbal conversation with James Kobak about this agreement, but he was provided the various drafts that were exchanged.

Q. And made comments?

A. As far as I'm aware, yes.

Q. You see Mr. Mazzuchi's cover e-mail says, "Further to Ed Rosen's discussion with Sheldon, attached is a revised draft of the recourse arrangement for the 250 million dollar purchase price. This also reflects comments from Lehman."

Did you understand that to be a reference to comments from the trustee's representatives?

A. I don't know.

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Q. Do you know whether this agreement was discussed with anyone from Weil Gotshal?

WITNESS' ATTORNEY: Are you referring to the DTC letter in general or this draft in particular?

Q. The DTC letter in general.

A. I do not recall.

Q. Do you know whether Weil was provided with any draft of the DTC letter agreement?

A. Yes, it would have been on the closing table and it may have been provided separately by Shelly Hirshorn.

Q. Other than it being on the closing table and whether Mr. Hirshorn did or did not provide it, do you though whether anyone otherwise provided either the final agreement or a draft of the DTC later agreement to anyone at Weil?

A. I don't have a recollection. They may well have been in the room. The rooms weren't closed off. They may have participated in reviewing the exchanges of draft. I just don't have a specific recollection. Again, at this time, I was in and out of the documentation,

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also working on other problems.

**Q. In which room was the DTC letter agreement put together -- speaking now to Cleary and the Barclays representatives -- which room at Weil were you working in?**

**WITNESS' ATTORNEY: Objection, compound. It is two different questions.**

A. Yeah, I don't know how to describe, there was a room on a floor and I was not located in a particular room. I jockeyed between several rooms.

**Q. Where was the, speaking specifically now to the DTCC negotiations, telephone calls and the drafting, in which room did that happen?**

A. That happened in a room on a different floor.

**Q. Do you know what floor?**

A. I believe it was the floor below the floor where the other meetings were taking place.

**Q. Were there any other Lehman-related conference rooms in use on that lower floor?**

A. I don't, I don't recall.

**Q. Did anyone from Cleary instruct anyone**

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**from Weil that they were not permitted into that room?**

A. No, not that I am aware.

**Q. Have you -- at the beginning of Mr. Mazzuchi's e-mail, he says, "Further to Ed Rosen's discussion with Sheldon," do you know what that discussion refers to?**

A. I think it refers to the same issue that's reflected in the earlier exchange of e-mail in which we were taking the view that this was a limited recourse form of credit support and not a guarantee of Barclays. This was an asset that would otherwise have been paid to the estate as part of the transaction that was being made available to secure additional credit support to DTCC and its related affiliates, and I thought that describing it as a guarantee by Barclays was not entirely accurate.

**Q. OK.**

MR. MAGUIRE: This is probably a good time to take a break.

(Recess)

**Q. I will show you a document we have**

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**previously marked as Exhibit 563C. Have you ever seen that letter before?**

A. Again, yes, without verifying how closely it tracks the actual agreement.

**Q. If you turn, sir, to page 4, there is a sentence beginning at the first full paragraph that starts, "By Sunday night, September 21." Do you see that sentence?**

A. Um-hm, yes.

**Q. I give that to you as background. My question is whether on any of the Sunday night or Monday morning conversations anyone from DTCC said in words, substance that they believed that DTCC's exposure to Lehman from processing the remaining transactions was substantially less than it originally feared?**

A. I think implicitly by them saying they had become comfortable with the internal review that they were doing, they would be willing to close the transaction with 250 million.

**Q. So the fact that there was a meeting of the minds suggests that DTCC had become more comfortable with its exposure?**

A. They may have said that we have

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**continued to review this and we have gotten to that point based on the review. I don't recall specifically.**

**Q. Do you have any recollection of that?**

MR. HUME: Objection, asked and answered.

**Q. The reason I ask is because you say specifically?**

A. I have an impression that that was what was conveyed, that they had gotten comfortable with the risk. But I don't have a specific recollection of a specific articulation from the calls.

**Q. I'll show you a document that has previously been marked as Exhibit 156B. It is actually not entirely clear, but it is a letter from Cleary Gottlieb dated March 6, 2009. Do you know whether you have ever seen that letter before, sir?**

A. I may have seen a draft of this letter. I don't have a specific recollection.

**Q. My only questions, sir, are with respect to page 3 of this letter, the second full sentence on page 3, starts, "Nothing in**

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1 ROSEN  
2 **this letter or in Exhibit B should be construed**  
3 **to suggest."**

4 **Do you see that?**

5 A. Yes.

6 **Q. Do you have an understanding, sir, as**  
7 **to what that sentence means, of Mr. Kobak's**  
8 **letter?**

9 A. To be honest with you, I would have to  
10 look at -- I would have to read the entire  
11 letter in order to put that sentence in context.

12 WITNESS' ATTORNEY: Maybe we could  
13 discuss this off the record and I could  
14 explain it to you.

15 **Q. Sure, that would be helpful. Let me**  
16 **just ask you then if you have an understanding**  
17 **that the securities in the Lehman -- that**  
18 **Barclays acquired the securities in the Lehman**  
19 **clearance boxes at the time of closing**  
20 **regardless of whether any customers had long**  
21 **positions in those securities?**

22 MR. HUME: I think you're asking the  
23 witness to interpret the contract when you  
24 ask that question. If you want to ask him a  
25 factual question about a discussion, that's

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1 ROSEN  
2 fine, but to interpret precisely which  
3 securities are covered by the clearance box  
4 provision of the clarification letter just  
5 seems like you're asking him a legal  
6 interpretation question.

7 **Q. You can answer.**

8 MR. HUME: Well, you can't answer to  
9 the extent it would reveal attorney work  
10 product analysis that we have done and I  
11 think beyond that --

12 A. I think answering the question would  
13 call for me to interpret the contractual  
14 documents.

15 **Q. Let me leave aside the contractual**  
16 **documents. Just as a matter of the business**  
17 **deal that was negotiated, did you understand the**  
18 **business agreement between the parties was that**  
19 **Barclays was getting the assets in the clearance**  
20 **boxes that were not owned by customers or did**  
21 **you understand that Barclays was getting the**  
22 **assets in the clearance boxes notwithstanding**  
23 **whether any customer had had a long position?**

24 A. My understanding was that they were  
25 getting what was in the clearance boxes.

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1 ROSEN  
2 **Q. And that's regardless of what**  
3 **customers had long positions in those**  
4 **securities?**

5 A. It is based on there being lien-free  
6 securities.

7 **Q. So the fact that customers had long**  
8 **positions did not affect Barclays' rights?**

9 A. I think you're asking me to interpret  
10 the implications of those provisions in the  
11 clearance box, relating to the clearance box.

12 **Q. I'm just asking you to tell me what**  
13 **you just told me?**

14 A. You're asking me to interpret whether  
15 the reference to the clearance box, the extent  
16 to which it covered certain kinds of assets and  
17 that's asking me to interpret a term of the  
18 agreement.

19 **Q. Leaving aside the agreement, just the**  
20 **business deal, just the business deal between**  
21 **the parties, did you understand --**

22 A. The business deal, as far as I was  
23 aware, did not include a limitation on the  
24 clearance box assets that Barclays was getting  
25 as far as I recall.

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1 ROSEN  
2 MR. MAGUIRE: We will mark as Exhibit  
3 626 a document Bates stamped BCI-CG 0024097  
4 through 99.

5 (Exhibit 626, document Bates stamped  
6 BCI-CG 00024097 through 99 marked for  
7 identification, as of this date.)

8 **Q. Had you received this e-mail chain**  
9 **from Mr. McDaniel, sir?**

10 A. I did.

11 **Q. And you had learned at some point that**  
12 **there was 1 billion dollars in cash margin at**  
13 **the OCC?**

14 A. Could you repeat your question.

15 **Q. Yes, you learned at some point there**  
16 **was 1 billion dollars in cash that the OCC was**  
17 **holding for the accounts of LBI?**

18 A. That is in here, yes.

19 **Q. And that was in addition to government**  
20 **securities that were being held at JP Morgan**  
21 **Chase?**

22 A. It presumably is additional to any  
23 other collateral that would have been noncash.

24 **Q. And you asked Jim for more information**  
25 **about the 1 billion dollars?**

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<p>1 ROSEN</p> <p>2 both 30(b)(6) and your individual deposition.</p> <p>3 My questions go to your personal knowledge. I</p> <p>4 have sort of reversed the rules a little bit.</p> <p>5 A. I am sorry, could you repeat the</p> <p>6 question.</p> <p>7 Q. Do you have any knowledge of whether</p> <p>8 anyone on the Barclays' side of the table,</p> <p>9 Barclays or its representatives, spoke to anyone</p> <p>10 on the Lehman side of the table, Lehman or its</p> <p>11 representatives, about provisions that needed to</p> <p>12 be included in the clarification letter</p> <p>13 regarding the termination of the repo?</p> <p>14 MR. HUME: Object to the form.</p> <p>15 A. I am sorry?</p> <p>16 MR. HUME: I object to the form.</p> <p>17 Q. I think you can answer.</p> <p>18 A. I believe that there may have been</p> <p>19 conversations between the lawyers, maybe Alan</p> <p>20 Kaplan at Barclays, but I don't have personal</p> <p>21 knowledge because I was not involved in the</p> <p>22 events leading up to the notice and the</p> <p>23 clarification that was made in the clarification</p> <p>24 letter.</p> <p>25 But I assume that -- it is obvious</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 that since the provisions were ultimately</p> <p>3 included in the clarification letter, that it</p> <p>4 was conveyed in the form of the amendments to</p> <p>5 the clarification letter that reflected those</p> <p>6 provisions.</p> <p>7 Q. OK. I would like to show you -- let's</p> <p>8 mark this as our next exhibit.</p> <p>9 (Exhibit 631, document Bates stamped</p> <p>10 BCI-EX(S) 201894 through 95 marked for</p> <p>11 identification, as of this date.)</p> <p>12 Q. The document I have put before you</p> <p>13 Mr. Rosen marked as Exhibit 631 bears Bates</p> <p>14 number BCI-EX(S) 00201894 through 895.</p> <p>15 Have you seen the document before?</p> <p>16 A. Again, not parsing every word, but it</p> <p>17 looks like an e-mail that I sent.</p> <p>18 Q. And you'll see it is an e-mail from</p> <p>19 you to Josephine Wang?</p> <p>20 A. Yes.</p> <p>21 Q. I can't --</p> <p>22 A. This is what I was referring to --</p> <p>23 Q. It is?</p> <p>24 A. -- earlier in terms of the sort of the</p> <p>25 clarification of the language included in the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 order, and then we asked SIPC and, I guess it</p> <p>3 was Mike Macchiaroli now that I see this, to</p> <p>4 confirm that they wouldn't seek such a stay.</p> <p>5 Q. I can't tell from the e-mail address</p> <p>6 with whom or what is Josephine Wang affiliated.</p> <p>7 A. You can't tell that. I think she is</p> <p>8 in the legal department at SIPC.</p> <p>9 Q. And you say in this e-mail to</p> <p>10 Josephine Wang and Steven Sharbeck, Mike</p> <p>11 Macchiaroli, "Below is the language we believe</p> <p>12 to be necessary to ensure that the order is</p> <p>13 sufficiently broad to cover the relevant</p> <p>14 Barclays Capital transactions."</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And below that is some proposed</p> <p>18 language and below that is a note that says,</p> <p>19 "Mike, I am trying to place us in the document,</p> <p>20 are you with me?"</p> <p>21 Where did the particular language set</p> <p>22 off in italics come from, beginning, "Exercise</p> <p>23 of any rights," and ending "September 24, 2008"?</p> <p>24 A. Probably from my colleague, Sandra</p> <p>25 Rocks.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 Q. And was this particular language shown</p> <p>3 to or discussed with, to your knowledge, anybody</p> <p>4 on the Lehman side of the table, including its</p> <p>5 business people or representatives?</p> <p>6 A. I think that certainly they would have</p> <p>7 seen the order in the proposed sale -- the sale</p> <p>8 order.</p> <p>9 Q. Well, you are a bit ahead of me. I</p> <p>10 guess I should have asked that. The order that</p> <p>11 you refer to, is that the sale order?</p> <p>12 A. Yes.</p> <p>13 Q. Do you know if this language wound up</p> <p>14 in the sale order?</p> <p>15 A. I would have to check. I believe so,</p> <p>16 but I would have to check to confirm.</p> <p>17 Q. And in the language that you proposed</p> <p>18 in this e-mail, there is a reference to section</p> <p>19 559 of the Bankruptcy Code. Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Were you familiar with the terms of</p> <p>22 Section 559 of the Bankruptcy Code when you</p> <p>23 proposed this language to the Section and SIPC?</p> <p>24 A. No, I was the transmitter.</p> <p>25 Q. Do you know if anyone at -- on the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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Barclays side of the table, including its representatives, spoke to anyone on the Lehman side of the table, including its representatives about Section 559 of the Bankruptcy Code?

A. I don't have a specific recollection of that.

WITNESS' ATTORNEY: Mr. Gaffey, let me state for the record, for what it's worth, the language, the italicized language says, "The order that the stays set forth above shall not apply to," and I just am not sure whether or not that really is referring to the sale order as opposed to some other order.

MR. GAFFEY: Neither am I. That's why I asked the question.

Q. Does what your counsel has to say refresh your recollection?

MR. HUME: I think it is the SIPC order.

A. Hang on a second. You know what, I think you're right. This predated the sale order. This is Wednesday -- this is the 17th of September, so there was a stay put into place

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and I guess this was to seek clarification of that.

Q. This refers to the SIPC order, the SIPA order?

THE WITNESS: Is that the only order?

MR. GAFFEY: Let's go off the record for a minute.

(Recess)

MR. GAFFEY: Back on the record.

Q. Mr. Rosen, do you know one way or the other what order is being referred to? I mean from memory, do you know one way or the other what order is being referred to in the document we have marked as 631, your e-mail?

A. I believe it was in anticipation of the sale order, but I'm not 100 percent confident.

Q. And how much time -- I know it was a busy week -- but how much time did you devote to conversations with the SEC about this assurance language that's set out in Exhibit 631, this issue?

A. I really don't have a clear recollection. We sent it down to them and I had

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a conversation and asked them to focus on it and then come back. I think there was -- they understood what the import of it was. And then they came back and confirmed that they wouldn't -- you know, that they agreed they wouldn't exercise that right to seek a stay. But it didn't take a lot of to'ing and fro'ing on the telephone to get there. Their people are I think quite familiar with their rights.

Q. Did there come a point that it came to your attention that the repurchase agreement was, in fact, terminated?

A. Well, it came to my attention that the clarification letter provided for a collapse instead of unwinding the repurchase agreement and then separately transferring to basically collapse that into one step. And it was part of -- the collateral that had been under that agreement was part of the securities that were being sold.

Q. My question is a little different. It goes to the timing point more than anything else, but did there come a time when you learned that the prepurchase agreement had been

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terminated? And if so, when did you find that out?

A. Well, with a consummation of the transaction, it was terminated.

Q. Do you know when the repurchase agreement was terminated?

MR. HUME: Objection, asked and answered.

A. My recollection is that the agreement was terminated as part of the consummation of the sale transaction.

Q. That would be at the closing on the 22nd?

A. Which would be at the closing.

Q. Did it come to your attention at any point prior to the closing that Barclays issued a notice of termination to Lehman?

A. At some point, I did see e-mail traffic indicating that a notice had been sent in error and then my recollection is that there was an effort to document that in the clarification letter.

Q. When did the fact of the notice come to your attention?

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<p>1 ROSEN</p> <p>2 A. I honestly don't recall.</p> <p>3 <b>Q. Was it after the sale hearing?</b></p> <p>4 A. I honestly don't recall when I became</p> <p>5 aware of it to be honest with you. There is</p> <p>6 probably an e-mail somewhere about it. I don't</p> <p>7 have a date on it.</p> <p>8 MR. GAFFEY: OK. Let's mark this</p> <p>9 document as Exhibit 632.</p> <p>10 (Exhibit 632, document Bates stamped</p> <p>11 CGSH 163813 through 815 marked for</p> <p>12 identification, as of this date.)</p> <p>13 <b>Q. I have put before you, Mr. Rosen, what</b></p> <p>14 <b>has been marked as Exhibit 632 document bearing</b></p> <p>15 <b>Bates number CGSH 00163813 through 815. Take a</b></p> <p>16 <b>look at the document, please, sufficient to tell</b></p> <p>17 <b>me whether you have seen it before.</b></p> <p>18 A. Yes, it looks like the e-mail</p> <p>19 correspondence to which I was a party.</p> <p>20 <b>Q. Does this e-mail constitute the</b></p> <p>21 <b>assurance that had been requested from the SEC?</b></p> <p>22 A. Yeah, I believe this is.</p> <p>23 <b>Q. And had you spoken with Alastaire</b></p> <p>24 <b>Bambach about the topic?</b></p> <p>25 A. I don't recall. It is possible that</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 he -- that I did or that he was on the phone</p> <p>3 when I spoke to someone regarding it. I</p> <p>4 honestly don't have a clear recollection. There</p> <p>5 was so many conversations with the SEC.</p> <p>6 <b>Q. And you asked Alastaire in the e-mail</b></p> <p>7 <b>at the top of the chain, an e-mail dated</b></p> <p>8 <b>September 18, 2008 at the time of 4:01 p.m. -- I</b></p> <p>9 <b>beg your pardon, the time of 3:59 p.m.</b></p> <p>10 <b>Alastaire, "Is this comfort something that we</b></p> <p>11 <b>may share with others who may have an interest."</b></p> <p>12 <b>Do you see that?</b></p> <p>13 A. Yes.</p> <p>14 <b>Q. Who were the others you are referring</b></p> <p>15 <b>to?</b></p> <p>16 A. I'm looking at that and I don't recall</p> <p>17 specifically whether this was sort of just a</p> <p>18 general, abstract question or whether I had</p> <p>19 somebody in mind. I honestly don't recall</p> <p>20 sitting here today.</p> <p>21 <b>Q. And did you share this comfort with</b></p> <p>22 <b>others?</b></p> <p>23 A. I think I probably shared it with the</p> <p>24 client certainly.</p> <p>25 <b>Q. Did you share it with anybody at Weil</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 <b>Gotshal?</b></p> <p>3 A. I don't recall providing it directly</p> <p>4 to Weil Gotshal.</p> <p>5 <b>Q. Do you know if it was provided</b></p> <p>6 <b>indirectly to Weil Gotshal?</b></p> <p>7 A. I don't have a recollection about</p> <p>8 that. It may have been. I do not. It may have</p> <p>9 been that I did this because the client at</p> <p>10 Barclays wanted to forward it on and they asked</p> <p>11 me whether they could. But I just -- but</p> <p>12 honestly, this is not a keen recollection.</p> <p>13 <b>Q. Do you have any knowledge, direct or</b></p> <p>14 <b>indirect, as to whether this comfort language</b></p> <p>15 <b>was shared with Lehman or Weil Gotshal?</b></p> <p>16 A. I really don't recall.</p> <p>17 <b>Q. You referred a few times today in</b></p> <p>18 <b>various contexts to -- you can put the document</b></p> <p>19 <b>aside. To various circumstances where -- and</b></p> <p>20 <b>this is, again, not a quote, but you talked</b></p> <p>21 <b>about jeopardy to the deal closing by Monday the</b></p> <p>22 <b>22nd, that's a prospect that you have talked</b></p> <p>23 <b>about a few times today. Was there a drop-dead</b></p> <p>24 <b>date for closing?</b></p> <p>25 A. No, there was just a perception that</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 if it didn't close by Monday, there could be</p> <p>3 developments in the marketplace which might have</p> <p>4 complicated or prevented the deal from getting</p> <p>5 done. I don't think it was an ultimatum.</p> <p>6 I think people wanted to get the deal</p> <p>7 done, but I think there was a concern that</p> <p>8 letting another business cycle go by was just --</p> <p>9 because we didn't know what was going to happen.</p> <p>10 I think this was the weekend where we had</p> <p>11 learned very late Sunday night that, you know,</p> <p>12 Morgan Stanley and Goldman Sachs had quite</p> <p>13 expeditiously become banks and people were</p> <p>14 worried and the hurry to do that was no doubt in</p> <p>15 part due to concerns.</p> <p>16 So I wouldn't say that it was a drop</p> <p>17 dead or an ultimatum or anything like that. It</p> <p>18 was that people realized it became more</p> <p>19 complicated and there was more noise that could</p> <p>20 interfere with the transaction the more time</p> <p>21 that elapsed. So we all, I think internally at</p> <p>22 Cleary regarded it as, put it this way, if the</p> <p>23 deal wasn't ready to close on Monday, we didn't</p> <p>24 want to be the ones responsible for it not being</p> <p>25 ready to close on Monday morning, so we took it</p> <p>TSG Reporting - Worldwide 877-702-9580</p>



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1 ROSEN  
2 seriously.  
3 Q. That issue aside, the deal could have  
4 closed on Tuesday?  
5 A. Theoretically, it could have closed on  
6 Tuesday if things hadn't intervened. It was  
7 more the risks that were associated with not  
8 closing expeditiously that were the concerns.  
9 You had to remember, the markets were very  
10 volatile and there were assets whose valuation  
11 was the source of considerable uncertainty and  
12 concern.  
13 MR. GAFFEY: I don't have anything  
14 further. Thank you for your time.  
15 MR. DAKIS: The committee has no  
16 questions.  
17 THE WITNESS: Thank you.  
18 (Time Noted: 4:35 p.m.)  
19  
20  
21 EDWARD J. ROSEN  
22  
23 Subscribed and sworn to  
24 before me this EDWARD J. ROSEN day  
25 of February, 2010.  
  
TSG Reporting - Worldwide 877-702-9580

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1 ROSEN  
2 EXHIBITS  
3 Exhibit No. Marked  
4 Exhibit 631 document Bates stamped 213  
5 BCI-EX(S) 201894 through 95  
6 Exhibit 632 document Bates stamped CGSH 220  
7 163813 through 815  
8  
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1 ROSEN  
2 INDEX:  
3 WITNESS EXAM BY: PAGE:  
4 E. Rosen Mr. Maguire 6  
5 Mr. Gaffey 202  
6 EXHIBITS  
7 Exhibit No. Marked  
8 Exhibit 622 declaration of Edward J. Rosen 8  
9 Exhibit 623 document Bates stamped 120  
10 CGSH0002699 through 700  
11 Exhibit 624 document Bates stamped DTCC 122  
12 00126 through 00198  
13 Exhibit 625 document Bates stamped DTCC 152  
14 00359 through 361  
15 Exhibit 626 document Bates stamped BCI-CG 175  
16 00024097 through 99  
17 Exhibit 627 document Bates stamped CGSH 181  
18 0034491 through 92  
19 Exhibit 628 document Bates stamped 183  
20 OCC36408 through 409  
21 Exhibit 629 document Bates stamped OCC 186  
22 0036472 through 36473  
23 Exhibit 630 document Bates stamped OCC 195  
24 0036482 through 483  
25  
  
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1 ROSEN  
2 CERTIFICATE  
3 STATE OF NEW YORK )  
4 )ss:  
5 COUNTY OF NEW YORK)  
6 I, MARY F. BOWMAN, a Registered  
7 Professional Reporter, Certified Realtime  
8 Reporter, and Notary Public within and for  
9 the State of New York, do hereby certify:  
10 That EDWARD J. ROSEN, the witness  
11 whose deposition is hereinbefore set forth,  
12 was duly sworn by me and that such  
13 deposition is a true record of the testimony  
14 given by such witness.  
15 I further certify that I am not  
16 related to any of the parties to this action  
17 by blood or marriage and that I am in no way  
18 interested in the outcome of this matter.  
19 In witness whereof, I have hereunto  
20 set my hand this 19th day of February, 2010.  
21  
22  
23 MARY F. BOWMAN, RPR, CRR  
24  
25  
  
TSG Reporting - Worldwide 877-702-9580

1  
2 UNITED STATES BANKRUPTCY COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x  
In Re: Chapter 11  
5 LEHMAN BROTHERS Case No. 08-13555 (JMP)  
HOLDINGS, INC., et al., (Jointly Administered)  
6 -----)

7  
8 \* \* \* HIGHLY CONFIDENTIAL \* \* \*

9 DEPOSITION OF MIKE KEEGAN

10 New York, New York

11 Friday, August 28, 2009  
12  
13  
14  
15  
16  
17  
18  
19

20 Reported by:

FRANCIS X. FREDERICK, CSR, RPR, RMR

21 JOB NO. 24379  
22  
23  
24  
25

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Page 7

1 M. KEEGAN - HIGHLY CONFIDENTIAL  
2 Quinn, Emanuel, Urquhart, Oliver &  
3 Hedges for the Official Committee of  
4 Unsecured Committee.

5 MR. LAYDEN: Good morning. David  
6 Layden from Jenner & Block for the  
7 Examiner.

8 BY MR. TAMBE:

9 **Q. Mr. Keegan, by whom are you**  
10 **employed currently?**

11 A. Barclays Bank, PLC.

12 **Q. And how long have you been**  
13 **employed by Barclays Bank, PLC?**

14 A. I've been an employee of Barclays  
15 since July of 1996. But during that time  
16 period, because of overseas assignments and  
17 things like that, I've been employed by a  
18 number of various entities within Barclays.

19 **Q. Starting in July of 1996 to the**  
20 **present, if you could just give us a broad**  
21 **overview of what your positions have been and**  
22 **what your duties have been at Barclays.**

23 A. Sure. In July of '96 I actually  
24 joined BZW which was the investment bank  
25 subsidiary of Barclays Bank located in London.

1 M. KEEGAN - HIGHLY CONFIDENTIAL  
2 I joined in London as a chief operating  
3 officer of the markets division of BZW  
4 reporting to Bob Diamond.

5 I did that job for two years until  
6 the formation of Barclays Capital in January  
7 of 1997 -- sorry. January of 1999. And I was  
8 the C -- sorry. It was January of '97. Sorry  
9 about that. So it was 18 months as COO. Then  
10 I was -- became the first CFO of Barclays  
11 Capital when Barclays Capital was formed. I  
12 did that job until November of 1999 and then I  
13 returned to New York at that point in time as  
14 the chief administrative officer for the  
15 Barclays Capital operations in the US. I did  
16 that until 2001 when I became the chief  
17 operating officer for Barclays Capital's  
18 credit trading and investment banking  
19 businesses. And that was the position I had  
20 until I guess November '07. And at that point  
21 became head of principal credit trading which  
22 is the job I currently have.

23 **Q. Just focusing on your current job**  
24 **and your prior job, so starting in 2001**  
25 **through the present, starting sometime in 2001**

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1 M. KEEGAN - HIGHLY CONFIDENTIAL  
2 **it sounds like you were head of credit**  
3 **trading?**

4 A. No. Chief operating officer which  
5 in Barclays Capital it's different things to  
6 different people. All right? So I worked for  
7 an individual named Grant Kavalheim.

8 **Q. How do you spell that last name?**

9 A. It's K-A-V-A-H -- let me write it  
10 out.

11 MR. STERN: We can look it up.

12 **Q. Grant was the first name?**

13 A. Yeah. Grant.

14 **Q. All right.**

15 A. K-A-V-A-L-H-E-I-M.

16 **Q. Okay.**

17 A. So Grant was head of trading and  
18 investment banking. I was his COO and as his  
19 COO, yeah, I had a bunch of different duties  
20 in charge of planning, budgeting, execution of  
21 any strategic plans that we wanted to  
22 implement. I took on responsibility for  
23 managing a number of businesses for him which  
24 included our -- initially a business called  
25 risk finance which was a credit arbitrage

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2 trading business. Then I took on  
3 responsibilities for managing our loan  
4 portfolio which is the portions of the loans  
5 that we would make to clients that we would  
6 retain on our balance sheet, managing that.  
7 Took on responsibility for our distressed  
8 proprietary trading business. And, finally,  
9 more recently, our real estate business.

10 **Q. And if I understand the change in**  
11 **the nature of your duties starting in November**  
12 **2007, you specified that date as the date at**  
13 **which you became head of prime credit trading?**

14 A. No. Principle credit trading.

15 **Q. Principle.**

16 A. So Grant departed the firm. All  
17 of the trading businesses rolled up to Jerry  
18 del Missier. Jerry del Missier had another  
19 individual by the name of Justin Bull who was  
20 his chief operating officer. So basically my  
21 chief operating officer duties for credit went  
22 away and I was left with what was my trading  
23 and risk management supervisory  
24 responsibilities.

25 **Q. Okay.**

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A. And I was renamed as head of principle credit trading.

Q. So starting with November 2007 through to the present if you could describe who you directly reported to.

A. November 2000?

Q. Seven.

A. Seven?

Q. Yeah.

A. As of November 2007 until today I directly report to Jerry del Missier.

Q. And who are the folks who directly report to you, if any?

A. Today it's Fred Orlan. It is an individual named Rene Canezen. It's an individual named Matt Barrett. An individual named Haejin Baek. And I'm pretty sure that's -- I'm trying to think. That's it right now the way we're organized.

Q. Okay. When we were earlier talking about some of the work you did when you were working with Grant you'd mentioned managing loan portfolios, distressed proprietary trading, et cetera.

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Do you still do all those -- manage all those types of trading?

A. Yes.

Q. So that's included within principle credit trading.

A. Yeah. What principle credit is is any risk that we are taking as a firm in the credit space in a non-market-making capacity is supposed to roll up into principle credit. It doesn't but...

Q. Other than the duties you have with respect to the principle credit trading business in the past twelve months have you been involved in any strategic initiatives by -- taken on behalf of Barclays?

A. I was involved in the Lehman acquisition, yes.

Q. And other than the Lehman acquisition, have you been involved in any other strategic initiatives, acquisitions, dispositions, things of that nature?

A. Nothing major.

Q. Broad terms, if you could just describe your involvement in the Lehman

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transaction.

MR. STERN: Jay, if it helps, I have a September 2008 monthly calendar, you know, just to keep the days of the week in mind. I just put that up here in front of Mr. Keegan.

MR. TAMBE: That's perfectly fine.

A. So my role I guess began Friday the 12th. And was one of the people who was brought in to examine portions of Lehman's balance sheet and operations in preparation for a bid to buy Lehman Brothers from what looked like it was going to be the -- in fact, the government at that point in time.

Q. And over the course of that next week, starting on the 12th going forward say ten days until the 22nd of September, if you could give us a little bit more detail in terms of what tasks you were doing in connection with the Lehman transaction.

A. Sure. I had responsibility specifically for looking at the commercial real estate portfolio, their loan portfolios, their private equity investments, and their

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corporate credit/debt positions.

And, you know, that process took basically, you know, the weekend through -- I don't know -- 3:00 or 4:00 on Sunday when it was determined that the trade wasn't going to happen.

Q. After that Sunday -- the Sunday you're referring to is the 14th of September, correct?

A. I believe it was, yes.

Q. After Sunday, the 14th, did you have any further involvement?

A. Yes, I did.

Q. Okay.

A. On Monday, the 15th, somewhere around 10, 10:30, 11:00 I got a phone call to show up to the conference room at Lehman Brothers' offices on the 32nd floor and to await instruction.

Q. And did some instructions arrive?

A. They did. I believe it was -- I'm not sure if it was actually but I believe it was Richard came in and told us that we had an opportunity to buy the US operations of Lehman

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2 Brothers I guess prior to bankruptcy  
3 because -- at least with respect to the  
4 broker/dealer. The broker/dealer was not  
5 filed on that Monday morning.

6 Q. And so after you were told about  
7 that opportunity what involvement did you have  
8 in those efforts to purchase Lehman's  
9 operations?

10 A. So I was asked to take a look at,  
11 you know, the potential assets that we were  
12 buying within the categories that I explained  
13 to you before. And it did not include any  
14 commercial real estate because our board told  
15 us we weren't eligible to take over any  
16 commercial real estate. It did not include  
17 any private equity investments because during  
18 the work we did over the weekend we determined  
19 that the private equity investments were not  
20 something that we wanted to take.

21 It did not include any of the loan  
22 portfolios, should not have included any of  
23 the loan portfolios, because that was another  
24 asset category we determined we did not want  
25 to take.

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2 broker/dealer?

3 A. Over the weekend we were. And  
4 then on Monday I'm not sure that we were given  
5 a complete list again but we were shown -- it  
6 was indicated what was on the books of the  
7 broker/dealer and I guess we had a list  
8 because I had determined whether we looked at  
9 it or not -- or didn't look at it over the  
10 weekend. That was the first step. You know,  
11 had we seen it before. We should have.

12 And then for particular areas  
13 where we identified over the weekend as being  
14 problematic with respect to value or other  
15 concerns, yes, we were given a CUSIP -- we  
16 asked for and were given a CUSIP list.

17 So Lehman obviously hadn't planned  
18 on going bankrupt and they were totally  
19 unprepared for the whole process on Monday so  
20 it was a struggle to get any information quite  
21 frankly.

22 Q. And throughout that week, the week  
23 of the 15th of September, was the focus of  
24 your efforts limited to analyzing the  
25 corporate debt securities aspect of the

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2 So it basically came down to,  
3 within my world, what I looked at, was the  
4 corporate debt securities that were on the  
5 books of the broker/dealer for the most part.

6 Q. And just to be clear on what you  
7 mean by corporate debt securities, what do you  
8 mean by that?

9 A. Commercial paper, bonds, credit  
10 link notes. Any other, you know, security  
11 instruments that they might have housed in  
12 broker/dealer that, you know, involved  
13 corporate credit risk.

14 Q. And for this asset class,  
15 corporate debt securities, would you typically  
16 be provided with a list of CUSIP numbers,  
17 identifiers for the securities that were held  
18 by the broker/dealer?

19 MR. STERN: I'm just going to  
20 object to the form. Are you asking him  
21 if he was? It says would you typically  
22 have been.

23 Q. That's fine. I could restate the  
24 question. Are you provided with CUSIP numbers  
25 out of the debt securities held by the

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2 portfolio or did you do other things as well?

3 A. It was primarily that. I also was  
4 more or less coordinating the communication  
5 internally between other individuals that had  
6 responsibility for various parts of the  
7 portfolio -- of Lehman's portfolio and  
8 analyzing it. And our team just -- and  
9 that's -- no one said, Mike, you're -- you  
10 know, you're in charge. Just that I'm more  
11 senior than the other guys. So I know -- I  
12 know Rich. I know Archie Cox. People like  
13 that.

14 I worked on the -- securing -- we  
15 were going to make a DIP loan to Lehman for  
16 the week and looking at the collateral  
17 associated with the DIP loan and how much --  
18 what collateral might be available for the DIP  
19 loan and how much we might be willing to  
20 provide. That was principally it.

21 Q. And the loan that you're referring  
22 to as the DIP loan was that, in fact, extended  
23 by Barclays to Lehman?

24 A. It was.

25 Q. And in what amount?



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A. I think it was \$500 million. I'm not positive what credit finance determined. The collateral was Newburger Berman property.

**Q. And just to be clear, this DIP loan is different than the tri-party repo or any other repo --**

A. Absolutely, yeah.

**Q. You said you were -- you played a coordinating role to some extent during that week. You mentioned two names. I believe you mentioned Rich Ricci. I think you mentioned Rich but that was Rich Ricci?**

A. That's Rich Ricci, yes.

**Q. And Archie Cox, right?**

A. Yes.

**Q. Who else were you coordinating with during that week?**

A. Jonathan Hughes, our legal counsel. A few conversations with Patrick Clackson.

**Q. And who is Mr. Clackson?**

A. He's the chief financial officer of Barclays.

**Q. Were you involved at all in**

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**negotiating --**

MR. STERN: Excuse me. Excuse me. I don't know if you -- if you completed your answer.

King.

THE WITNESS: Oh, the guys I was coordinating with. Sorry. I thought you were looking upward, not downward.

MR. STERN: It's a gen -- just to clarify, it's a general question about all the people he was coordinating with. Not just the more senior people.

MR. TAMBE: That's fine.

**Q. Let's go through the list of everyone you were coordinating with. You got to Mr. Clackson. Mr. King.**

A. Right. So Stephen King was responsible for looking at all of the ABS and mortgage -- residential mortgage assets with Lehman Brothers. Similar role to what I had on the credit side. John Mahon took that responsibility for, I guess you would call them the rates, assets, government bonds principally. Anything that they might have

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done with repo would have rolled up to him. The exposures, if any, on derivative contracts.

**Q. Anyone else in this coordination circle that you --**

A. That was pretty much it. There was other people that -- like I said, I was not in the coordination but I was working with our guys in credit on the DIP loan. A guy named Mark Manski and Ian Prior on that. I had conversations with James Walker. James was controller of the US. Another lawyer named Jason White. Jason was working on the DIP loan. And Gerard LaRocco I guess as well. And Gerard was working on putting a repo facility in place.

**Q. Anyone else?**

A. Not that I -- not that I remember. I'm not saying there wasn't. I just don't remember.

**Q. Were you part of the group of people from Barclays that was negotiating the terms of the transaction with the folks from Lehman?**

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A. I wouldn't say I was negotiating the terms of the transaction but I was involved in -- you know, I was also involved on Thursday.

**Q. And you say you were also involved on Thursday. What do you mean by that?**

A. So we struck a deal on Monday in effect as to what we were going to buy. And then -- you know, so I worked from, you know, at Lehman from whatever time, 10:30 in the morning, 10:00 to roughly 2:30, 3:00 in the morning, Tuesday morning. Went and got some sleep. Tuesday was more worried about other things in our world than I was worried about anything in Lehman's world whose world was melting down. And more focused on that Tuesday and Wednesday.

And then Thursday afternoon I got called in around 4:00 to come over again to Lehman by Rich to start taking a look at the inventories that were coming in related to, you know, an effective settlement of the asset purchase to make sure we were getting, you know, what we bought and everything we bought.

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2 And Stephen was there as well and  
3 John was back in UK at that point in time.

4 Q. And the Stephen you're referring  
5 to is Stephen King.

6 A. Yes.

7 Q. And the John you were referring to  
8 is who?

9 A. John Mahon.

10 Q. Have you ever seen a copy of the  
11 Asset Purchase Agreement between Lehman and  
12 Barclays?

13 A. Only in preparation for this.  
14 Prior to that, no.

15 Q. So it's fair to say the first time  
16 you ever laid eyes on the Asset Purchase  
17 Agreement was sometime in the past couple  
18 weeks.

19 A. Yeah. I saw a version of the  
20 agreement early on. I was asked a specific  
21 question which escapes me now why I was given  
22 the agreement. But it was very -- it was  
23 specific to, you know, is this worded  
24 properly, yes or no. And I just don't  
25 remember what it was.

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2 MR. STERN: Well, since it may  
3 have been with a lawyer I think I'll  
4 instruct you not to answer because it  
5 may have been a privileged conversation.

6 THE WITNESS: Okay.

7 A. I don't know then.

8 MR. STERN: If you remember what  
9 provision you discussed I think that's  
10 fine.

11 A. No, I don't. If you put some  
12 documents in front of me I might remember but  
13 right now I don't remember.

14 Q. There's a document that's been  
15 referred to as the clarification letter. Does  
16 that term have any meaning to you?

17 A. I'm not sure what that is.

18 Q. Okay. Did you have any  
19 understanding that there were features of the  
20 transaction that changed over the course of  
21 that week, the week of the 15th?

22 A. Oh, yeah. Yes, I did.

23 Q. And what's your understanding of  
24 the features of the deal that changed over the  
25 course of that week?

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2 Q. And you say it was early on.  
3 Would you put it during that week of the 15th?

4 A. Yeah. During the week prior to  
5 Thursday, I believe.

6 Q. And the provision you were shown,  
7 were you shown that provision in the signed  
8 APA or an APA that was being drafted?

9 A. I think it was a draft.

10 Q. And who showed you that provision?

11 A. I think it was the legal  
12 department. It may have been the finance  
13 department. I don't remember.

14 Q. You don't down remember the  
15 substance of the discussion.

16 A. The substance was --

17 MR. STERN: If it was a discussion  
18 with legal, don't talk about the  
19 substance.

20 THE WITNESS: I don't remember who  
21 it was with.

22 Q. Okay. So what was the substance  
23 of the discussion?

24 MR. TAMBE: He doesn't know if it  
25 was with a lawyer.

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2 A. All right. So Monday night when I  
3 left we had come to a conclusion as to what we  
4 would buy and what we wouldn't buy. There  
5 were assets -- you know, we did have problems  
6 with the valuations with a number of the  
7 assets that Lehman had on the books. And  
8 overall our conclusion from the weekend was  
9 that Lehman was aggressive with the rest of  
10 the valuations. And, you know, we went back  
11 to them on Monday and told them that, you  
12 know, we didn't agree with certain prices. We  
13 also went back to them with the knowledge that  
14 the market was melting down and that that deal  
15 wasn't closing until the end of the week,  
16 saying that, you know, we need to put a  
17 haircut on these assets because the volume of  
18 the assets plus the timing -- you know, we're  
19 trying to predict what the assets of are going  
20 to be worth on Thursday, Friday when the deal  
21 closes. We know Lehman's employees have all  
22 lost their jobs in effect as of right now and  
23 they're not too focused on marketing the  
24 inventory, et cetera.

25 So we had proposed some haircuts

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2 to them. It was assets that we thought were  
3 materially -- you know, relative to those  
4 assets themselves, materially mismarked and we  
5 went back to Lehman on those and told them  
6 where we thought the valuation of those assets  
7 were. Some of those we agreed. Some of those  
8 weren't agreed. And we told them to keep the  
9 assets.

10 I've lost my focus on the  
11 question. Could you just repeat the question?

12 Q. The question was about what the  
13 features of the deal that changed over the  
14 course of the week.

15 A. Okay. So that was the deal. So  
16 we basically came to a definitive list of what  
17 we said we would purchase in effect.

18 Q. I just want to drill down a little  
19 bit on a couple of things you said.

20 MR. STERN: Just for  
21 clarification, we've talked about the  
22 status as of Monday and then you're  
23 going to clarify that and then you'll go  
24 to the changes.

25 MR. TAMBE: Yeah.

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2 MR. STERN: Okay. That's fine.

3 Q. You had some concerns about the  
4 valuations of the assets on Monday, correct?  
5 Lehman's valuations.

6 A. Yeah.

7 Q. And you went back to them and  
8 proposed haircuts on these assets.

9 A. Well, we proposed valuation  
10 adjustments and haircuts, yes.

11 Q. Do I gather from your answer that  
12 on some of the haircuts or valuation  
13 adjustments you proposed you reached agreement  
14 with Lehman?

15 A. On some of them, yeah.

16 Q. And others you didn't?

17 A. No. Other's they just thought we  
18 were nuts.

19 Q. On the ones where you reached an  
20 agreement with Lehman as to the haircut or the  
21 valuation adjustment, were those included then  
22 in the list of assets that Barclays would be  
23 purchasing?

24 A. Yes.

25 Q. And the ones that you did not

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2 reach an agreement with Lehman on on valuation  
3 were those excluded from the list of assets?

4 A. That's correct.

5 MR. STERN: Let me just pause.  
6 I'm sorry. For the reporter. There's a  
7 question "And others you didn't." What  
8 do you have as the answer?

9 (Discussion held off the record.)

10 BY MR. TAMBE:

11 Q. In round numbers, for the  
12 valuation adjustments or haircuts where you  
13 did reach an agreement --

14 A. I don't know.

15 Q. \$5 billion?

16 A. No idea.

17 Q. Have you ever heard about a  
18 \$5 billion adjustment or mark-down in the book  
19 value of Lehman's assets around that period of  
20 time?

21 A. No. Again, only in preparation  
22 for this deposition. But not otherwise.

23 Q. When you said you proposed  
24 haircuts or valuation adjustments to Lehman on  
25 Monday, was there a document that had

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2 asset-by-asset proposed mark-downs?

3 A. Yeah. There was a period -- there  
4 was an asset -- there was asset-by-asset where  
5 we thought we had problems with valuations.  
6 But then there was also a summary where we  
7 just said that, you know, we're talking so  
8 much -- you know, we're taking on so much  
9 inventory, the market is melting down, you  
10 aren't getting your hands on it till Thursday.  
11 You know, what do you need to protect yourself  
12 between now and Thursday or Friday. So we can  
13 manage the assets if the deal closes, right?

14 So that was the Monday night  
15 process. And I have no idea what the number  
16 actually added up to. We weren't targeting a  
17 number or anything like that. We were just  
18 saying based on this type of asset, based on  
19 what's going on in the market, how much  
20 protection do you think you need between then.

21 Q. Just to get a better understanding  
22 of your proposal that Barclays made, was it by  
23 asset category or was it even more granular,  
24 particular asset by asset?

25 MR. STERN: Objection to the form.

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2 **Q. Do you understand my question?**  
3 A. Ask it again. Or repeat it.  
4 **Q. The question I'm asking --**  
5 MR. STERN: I'm objecting to the  
6 proposal term.  
7 MR. TAMBE: That's fine.  
8 **Q. You proposed some haircuts or**  
9 **valuation adjustments, right?**  
10 A. Yeah. By category we said we  
11 think we need --  
12 **Q. When I use the word proposal**  
13 **that's what I'm talking about, okay?**  
14 A. Okay.  
15 **Q. That proposal. Was it by asset**  
16 **category or by specific asset?**  
17 A. If we had a valuation adjustment  
18 it was by asset. And if we had a haircut it  
19 was by category.  
20 **Q. Do you recall any of the category**  
21 **type haircuts that you proposed?**  
22 A. The actual amount?  
23 **Q. Yeah.**  
24 A. No, I don't. Off the top of my  
25 head I don't know. I'd have to look at the

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2 of what inventory we got and then just do a  
3 simple comparison back to what we bought  
4 Monday and say, Yeah, it's the same list. It  
5 wasn't the same list. And, in fact, there was  
6 a huge delay in us getting anything back, you  
7 know. We had wired out through JPMorgan money  
8 and they were supposed to deliver us  
9 securities and were having difficulties  
10 delivering us securities for some reason. So  
11 there was a long delay. Several hours.  
12 And my recollection is around 8:00  
13 at night, you know, we started getting stuff  
14 in and looking at it. We might have started  
15 getting it a little bit earlier, around 7, but  
16 we started looking at it.  
17 But about 8:00 at night on  
18 Thursday night we noticed that this wasn't the  
19 inventory that we had agreed to purchase on  
20 Monday. It was different. And it included a  
21 lot of the inventory that we thought was  
22 overvalued. At least the initial deliveries  
23 were a lot of what we thought was overvalued  
24 in the mortgages area, mortgage agencies, that  
25 we said we couldn't come to an agreement with

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2 documents.  
3 **Q. But you believe there's a document**  
4 **or documents from Monday which would contain**  
5 **that information.**  
6 A. There was a Monday -- there was a  
7 document that contained that information on  
8 the Monday, okay? That deal didn't happen so  
9 I have no idea if that still exists or doesn't  
10 exist.  
11 **Q. All right. We got down this**  
12 **discussion talking about how the deal changed**  
13 **or how features of the deal changed during**  
14 **that week. That deal that was being discussed**  
15 **on Monday, did that deal get done?**  
16 A. So the deal on Monday, okay, in  
17 the context of the bigger deal, I guess yes,  
18 it got down. But in the context of what I was  
19 looking at, which was the purchase of the  
20 inventory, that aspect of the deal didn't get  
21 done, okay?  
22 When I showed up on Thursday night  
23 there was a -- I got there around 4:00.  
24 Somewhere around there. And I expected to  
25 take a look at, you know, the settlement list

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2 Lehman on valuation and we were leaving  
3 behind.  
4 So it was at that point I learned  
5 for the first time that the agreement had  
6 changed and apparently sometime on Tuesday the  
7 Federal Reserve came in to us and said -- you  
8 know, it's been relayed to me by third  
9 parties, I have no idea what they actually  
10 said -- but, in effect, what I've been told,  
11 if you guys want the deal to go through you  
12 need to take us out of our repo. And so the  
13 construct of the deal changed from a purchase  
14 of inventory to taking an assignment of repo.  
15 **Q. And who described that change in**  
16 **the nature of the deal to you?**  
17 A. Could have been Ian Lowitt from  
18 the Lehman side. It could have been Rich. It  
19 could have been Jonathan Hughes. It could  
20 have been -- I don't know. I mean, I was kind  
21 of stunned when I heard it. But I don't  
22 remember exactly who told me that.  
23 I do know what I did after that is  
24 I had a conversation with Ian Lowitt, and  
25 said, "Ian, we're getting stuff we didn't



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2 want. You need to take it back and give us  
3 the stuff we bought."

4 And he explained that he couldn't  
5 do that because even though they hadn't filed  
6 bankruptcy, the counterparties to the repo for  
7 the securities company were grabbing  
8 collateral and liquidating it on them. And  
9 they didn't have the inventory we bought  
10 anymore. They only had what was in repo at  
11 the Fed.

12 **Q. Did you have any discussions with**  
13 **Ian Lowitt or others about finding additional**  
14 **inventory beyond the inventory that had been**  
15 **identified on Monday?**

16 A. Yeah. Because we had value -- we  
17 were getting, for instance, these mortgage  
18 securities, agency mortgage securities. I  
19 think the number, and I don't recall, Stephen  
20 would know the exact number, but I think we  
21 thought the adjustment should be as much as a  
22 billion eight of new securities. And Lehman  
23 did not agree with us. So those securities  
24 were to be left behind. And then all of a  
25 sudden they show up in our box. Our

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2 inventory. And so we knew they were marked  
3 wrong. Or we believed they were marked wrong.

4 And, therefore, we were, you know,  
5 short cushion or haircut, if you will, on the  
6 repo. And, you know, that was a concern to us  
7 because we had -- on Monday in effect  
8 negotiated, you know, what we thought was a  
9 cushion to protect us, and -- similar to a  
10 haircut on repo. And on Thursday night we  
11 were finding out that the actual repo haircuts  
12 were in effect getting absorbed by the mismatch  
13 of Lehman securities.

14 So, yeah, we needed additional  
15 collateral to protect us.

16 **Q. And did you have in mind a number**  
17 **or target amount of that additional**  
18 **collateral?**

19 A. I did not. I just -- I didn't --  
20 I didn't -- you know, we didn't -- we knew,  
21 for instance, the billion eight, but we didn't  
22 know what else we got. And we were struggling  
23 all night long to find out what we were  
24 actually getting in terms of inventory,  
25 because it came in dribs and drabs through the

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2 evening because of what we believed was  
3 operational errors that JPMorgan made.

4 MR. STERN: Let me just pause for  
5 one minute.

6 (Discussion held off the record.)

7 BY MR. TAMBE:

8 **Q. Did you discuss with anyone a**  
9 **target number for the additional collateral**  
10 **that Barclays was looking for after the**  
11 **Thursday night transfer?**

12 A. No. I did not discuss a specific  
13 number.

14 **Q. Did you discuss a range?**

15 A. No. What we were asked was -- the  
16 question we were asked was how much your  
17 haircut -- so -- we gave a number -- you know,  
18 an amount of money to the Fed, in essence,  
19 which was I think gross somewhere in the \$45  
20 million area. Okay? The Fed delivered the  
21 securities that went through JPMorgan. I have  
22 no idea if what we got was what came out of  
23 the Fed and went to JPMorgan or how JPMorgan  
24 determined what we got. All right? But we  
25 got stuff from JPMorgan.

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2 We were trying to find out all  
3 Thursday night, all Friday morning, what  
4 securities we got, were getting, were likely  
5 to get, what Lehman thought the value of those  
6 securities were. Right? So we could know, we  
7 could understand what the magnitude of the  
8 repo haircut that we received was.

9 And Lehman wasn't able to provide  
10 us that information. JPMorgan wasn't able to  
11 provide us that information. And, you know,  
12 we had some general idea but not specific idea  
13 of what the haircut cushion was. And the  
14 question we were being asked was I guess the  
15 way the deal was structured initially there  
16 was some liabilities we're assuming as well,  
17 is there enough cushion to pay for those  
18 liabilities. And we couldn't answer that  
19 question.

20 **Q. Was it a feature of the**  
21 **transaction as you understood it that the**  
22 **cushion you had negotiated on Monday would be**  
23 **sufficient to pay for the liabilities you were**  
24 **assuming?**

25 A. No. Not on Monday night, no. I



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2 had nothing to do -- I had no idea that there  
3 were liabilities that we were assuming.

4 **Q. On Thursday was there a discussion**  
5 **about ensuring that there would be enough of a**  
6 **cushion to cover the liabilities that Barclays**  
7 **was assuming?**

8 MR. STERN: Objection to the form.

9 A. Read the question.

10 (Record read.)

11 A. No, there was not a specific  
12 discussion that there was enough cushion for  
13 the liabilities that we were assuming.

14 **Q. Was there a discussion of the size**  
15 **of the cushion versus the amount of the**  
16 **liabilities on Thursday night?**

17 A. Not versus the liability. I had  
18 no idea what the liabilities were, okay? So I  
19 did not have a view of that side of the  
20 transaction.

21 MR. STERN: When you're asking was  
22 there a discussion, Jay, are you asking  
23 a discussion that he participated in or  
24 are you asking about if he knows about  
25 other discussions?

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2 MR. TAMBE: Either way.

3 MR. STERN: Because it's  
4 misleading the way you're asking it.

5 MR. TAMBE: So you have an  
6 objection to form?

7 MR. STERN: I'm just trying to  
8 clarify what you mean when you asked was  
9 there a discussion.

10 BY MR. TAMBE:

11 **Q. Were you involved in any such**  
12 **discussions, sir?**

13 A. I was told at one point in time  
14 that the problem we had because of the deal  
15 changing with respect to other aspects outside  
16 the inventory, okay, was that Lehman had no  
17 way to pay for certain liabilities that we  
18 were absorbing. I'm assuming -- and this is  
19 an assumption because of the issue what  
20 happened with the close-out of the repos by  
21 their counterparties -- that somehow that  
22 would -- those liabilities were being paid for  
23 in the overall structure of the deal and now  
24 there was a hole in the deal.

25 And so how you plug that hole was

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2 the question. And what we were asked was how  
3 much do we think we have in haircut that could  
4 plug that hole. And the difficulty that we  
5 had is we didn't know how much we had in  
6 haircut because we didn't have reliable  
7 valuations on what we were getting. We did  
8 know we were getting inventory that we had  
9 valuation problems with and we had -- on those  
10 items we had a relative understanding of how  
11 much that was and how much shortfall you had  
12 and therefore how much "haircut" would be  
13 being absorbed by just valuation errors on  
14 Lehman's part.

15 And then how much -- you know,  
16 what do you think is kind of left over and  
17 that's the question we were trying to answer  
18 all day. All night.

19 **Q. Okay. And this effort of trying**  
20 **to identify that question -- trying to answer**  
21 **that question, did that effort continue into**  
22 **the next day, the Friday?**

23 A. Yeah. It continued into Friday.

24 **Q. And did it continue after Friday?**

25 A. I'm not aware that it continued

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2 after Friday. But what did continue after  
3 Friday was the process of understanding  
4 exactly what we did get and marking it  
5 appropriately.

6 **Q. Now, for the collateral that was**  
7 **transferred over on Thursday you did at some**  
8 **point receive a valuation report from Bank of**  
9 **New York for that collateral, correct?**

10 MR. STERN: Objection to the form.

11 A. We received an indication what  
12 they thought the value might be.

13 **Q. And when did you receive that**  
14 **indication?**

15 A. My recollection is that was Friday  
16 morning because we still hadn't been able to  
17 get the information out of JPMorgan and we  
18 still hadn't been able to get the information  
19 from Lehman Brothers. And we were pretty  
20 desperate to try to understand where we were  
21 at that point in time.

22 **Q. And do you recall the value that**  
23 **Bank of New York but on the collateral?**

24 A. There was several different runs.

25 There was one that was above 50. There was

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one that was 47. There was -- there were several different runs.

You know, the Bank of America numbers --

**Q. You mean the Bank of York numbers.**

A. Bank of New York. Sorry. Bank of New York, correct.

You can't put that much reliance on them or we couldn't put that much reliance on them because they're not the agent for Lehman. They don't have Lehman's marks. They wouldn't know securities necessarily that don't trade and aren't actively quoted. They wouldn't have reliable, accurate marks on those.

**Q. If they're not the agent for Lehman whose agent were they?**

A. They're our agent. They were seeing this stuff for the first time.

**Q. Did you ever make it down to the courthouse for any of hearings about this matter?**

A. No.

**Q. Did you ever talk to anyone who**

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was down at the courthouse about the courthouse hearings?

A. Yeah, I did.

**Q. Who did you speak with?**

A. I spoke with Michael Klein at one point asking him how it went. I think I spoke with -- I'm drawing a blank on the guy's name. It was our restructuring guy. Dan Shapiro.

MR. STERN: Mark Shapiro?

THE WITNESS: Mark Shapiro. I'm sorry.

**Q. Do you recall anything that Mr. Klein and Mr. Shapiro told you about the courtroom proceedings?**

A. I was -- after the fact I was interested in knowing, you know, what happened. And, you know, is the judge going to approve the deal or not approve the deal. How did it go. And it was more along those lines.

I guess during the -- while they were in the courtroom I got asked the question pretty late at night from Mark -- I think he sent an e-mail out that he was trying to get a

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question answered. I answered that question.

**Q. Do you recall what the question was?**

A. The question as I read it were did we take any assets from JPMorgan out of the tri-party repo. And, you know, I don't know if you know what the tri-party repo was or not but --

**Q. When you refer to the tri-party repo what are you referring to?**

A. So, again, on the Monday night one of the things that was going on in addition to the asset purchase is JPMorgan came back to us and said, Listen, you guys are buying these guys. If you're buying some of the inventory can you help us out, all right, and take some of the repo of the securities you're buying and provide -- take some of the load off of them because everybody was strapped for cash after this -- strapped for cash after the bankruptcy.

And so they wanted to know if we could provide any repo for what we were buying. And so we agreed to buy -- to provide

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5 billion of repo of the inventory that we agreed to buy on Monday night.

For some reason unknown to me again that proved to be about 15 billion by Thursday. And it contained securities that we did not purchase or agree to purchase on Monday night.

So the first thing I was asked when I got to Lehman on Monday -- on Thursday night, sorry, not Monday -- Thursday night, was for -- Jerry del Missier called me up and said take a look at the repo with JPMorgan and tell me whether we should roll this or not.

And I got the list of collateral that was in repo and there was a \$5 billion security. I have no idea what it was but I know we didn't purchase any \$5 billion notional amount of security. So I advised Jerry this is not what we agreed on Monday night. It was not what we purchased. And, you know, my recommendation would be not to roll a repo with JPMorgan.

So Archie sent an e-mail out. I guess he was trying to get a question

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**Subtracting five hours from GMT, right?**

A. No, no.

Three in the morning. So, yeah.

Sorry. Yeah. I don't know why his e-mail is in GMT. I have no idea. But, yeah, he's -- yeah, that would have added five hours. So it's 10:00 -- you're right. It's 10:00 on Sunday night. 10:30 on Sunday night.

**Q. In his e-mail he makes reference to I guess Lehman people walking out of the Lehman building. It's being carried on the TV coverage.**

**Do you see that?**

A. Yeah.

**Q. At this point, late Sunday night, early Monday morning, the transaction that you were contemplating and working on on the 13th and 14th, that transaction was not going to go forward, correct?**

A. That's correct.

**Q. Was there ever a contemplation that you would hire the former Lehman employees without buying any of the assets of Lehman?**

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A. I did suggest that actually. So on Monday -- it wasn't over the weekend that we did that, right? So over the weekend, no, the answer to your question. But on Monday, right, when I was going through the assets that were in Lehman's broker/dealer and what other entities we might be buying or assets we might be buying, one of the people I talked to was Eric Felder. I was specifically talking to him about -- one of the things was that I recall talking to him about was auction rate securities and there was a bunch of Lehman commercial paper and notes that were in his inventory as well which I talked to him about which obviously weren't -- you know, weren't marked correctly at that point in time after the bankruptcy.

There were some credit link notes that Lehman was the payor on that they obviously wouldn't be able to pay going forward. So those were the kind of topics I was talking to him about. And, you know, how should we look at the value of these things, right? Because it's like Lehman is bankrupt

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now and Lehman is the payor on these things and, you know, they can't possibly be worth what you paid for them which is what they're marked at.

And in the context of that discussion we got onto the auction rate securities and the auction rate securities I suggested that we didn't want to take them because of all the noise around auction rate securities and the whole remarketing and how we would do that if we were to take them, et cetera.

And he said to me something to the effect, Well, I didn't realize that you couldn't take them, that we could leave stuff behind. I said, Yeah, this is going to be an asset purchase. It's not going to be the purchase of a company. So we can leave whatever we want behind.

And he suggested then you should leave it all behind. You shouldn't take anything. And I was kind of curious. He said, Do you realize what's going on out there, and then actually that Monday morning I

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didn't because we went over it -- you know, Sunday night the transaction and, you know, we ended it pretty depressed. Monday I came in -- what I was really focused on Monday was what's our exposure to Lehman. You know, what swaps are going away. You know, that's what I was focused open. I wasn't focused on what was happening in the market.

So he said, "Do you realize what's happening in the market?"

And I said, "No, I've been locked up in your office all day. I don't have access to anything. I have no idea what's going on."

He said, "The whole world is melting down out there."

He said, "So you guys are nuts if you take anything. If you could leave it all behind you should leave it all behind."

And actually when you sat back and thought about it that seemed like a brilliant idea.

So our first proposal to our management when they said, Okay, you know,

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what are you guys comfortable buying, was --  
we said nothing. Just leave it all here.  
Just take the people.

And that didn't happen though,  
obviously. We were told to go back and try  
again. Actually, we were instructed to take  
everything that we could take because the  
concern over whether -- you know, what you'd  
be leaving Lehman with without people to  
manage the inventory and leaving all of that  
inventory on their balance sheet in markets  
that were, you know, falling apart.

**Q. Was there also discussion that  
some of Lehman's inventory was worth  
purchasing at the right price?**

A. I don't recall if there was or  
not. I mean, that wasn't the instruction.  
The instruction was in effect if you want the  
deal to go through you got to try to take  
everything you can because if you leave too  
much behind and you leave -- and you leave --  
and no people to manage it, that will never  
get approved.

**Q. And who did you have that**

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**discussion with about whether all should be  
left behind or none should be left behind?**

MR. STERN: Let me just pause here  
because I think we're blurring over into  
privileged conversations but I think you  
can answer. You can answer that  
question and then we'll take it a  
question at a time.

A. It was our bankruptcy counsel  
basically.

**Q. Your in-house bankruptcy counsel?**

A. No, no. Our outside advisors plus  
Archie Cox.

**Q. Who was your external bankruptcy  
counsel at that time?**

MR. STERN: You can answer that if  
you remember.

A. I think it's Cleary but I could be  
wrong.

**Q. You were in discussions with  
Cleary?**

A. They were in the room when I --  
when we came in and suggested that we take  
nothing.

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**Q. Who else was in the room when you  
came in and suggested --**

A. Archie Cox.

**Q. And who else from Barclays?**

A. That was it.

**Q. So it was you, Archie Cox, and  
someone from Cleary?**

A. Two people from Cleary, yeah.

**Q. Do you remember who the people  
were from Cleary?**

A. Well, actually, Michael Klein  
might have been in the room. I can't say for  
certain, but he might have been in the room.  
I can't say -- no, I can't say for certain.  
You know, I don't know. It was a woman and a  
guy.

**Q. Lindsay Grandfield?**

A. I don't remember the name.

**Q. And do you recall when that  
meeting was?**

A. It was about 6:30, 7:00 on Monday  
night.

(Deposition Exhibit 301A, document  
bearing production numbers

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BCI-EX-(S)-00082251, marked for  
identification as of this date.)

BY MR. TAMBE:

**Q. Sir, I've handed you a one-page  
document marked 301A. Take a moment to look  
at it and let me know when you're done.**

(Document review.)

A. Okay.

**Q. When you'll see this is an  
exchange of e-mails between Rich Ricci, Robert  
LeBlanc, and Patrick Clackson.**

**Do you see that?**

A. Yep.

**Q. Who is Robert LeBlanc?**

A. Rob LeBlanc is head of group risk  
at Barclays PLC.

**Q. And you see there's a reference in  
the first e-mail at the bottom of the chain to  
the assets that would be included.**

**Do you see that?**

A. Yeah. "Please could you let me  
know who I can speak to later today to broadly  
understand the assets that would be included.  
Thanks."



1 M. KEEGAN - HIGHLY CONFIDENTIAL  
2 **Q. And then at the top of the**  
3 **document, Rich Ricci's e-mail states, "Looks**  
4 **like roughly \$50 billion."**

5 **Do you see that?**

6 A. Yep.

7 **Q. Was it your understanding that the**  
8 **assets that would be included in the purchase**  
9 **as of Monday, September 15th, were roughly**  
10 **\$50 billion?**

11 A. We were paying -- I don't know how  
12 he knows that necessarily, right? We were  
13 paying 45 billion for assets that were under  
14 repo at the Fed, right? So, you know, repo  
15 lending basically is secured lending. And a  
16 percentage of the value of the assets is  
17 typically advanced, not a hundred cents on the  
18 dollar but a percentage.

19 That difference between the  
20 advance amount and the asset market value --  
21 or mark is probably a better term -- is the  
22 haircut or cushion that the financier requires  
23 in order to protect themselves in the event  
24 they need to liquidate the inventory.

25 MR. STERN: Can you reread the

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2 question, please, Francis.

3 (Record read.)

4 A. I didn't know what they were. So  
5 that's a better answer. I didn't know what  
6 they were necessarily.

7 **Q. Did you understand the reference**  
8 **in Rich Ricci's e-mail of 50 billion to be the**  
9 **value of the assets to be included in the**  
10 **purchase?**

11 A. No. What I was actually trying to  
12 explain to you was if we were paying 40 -- I  
13 don't know what they were exactly, but if we  
14 were paying 45 billion to take the Fed out of  
15 its repo, plus some haircut on top of that to  
16 get to 50 billion, I'm not surprised. But I  
17 don't know for a fact one way or the other  
18 what they were. That's the information we  
19 were trying to get from Lehman and couldn't  
20 get.

21 (Deposition Exhibit 302A, document  
22 bearing production number  
23 BCI-EX-00054270 with attached  
24 spreadsheet, marked for identification  
25 as of this date.)

1 M. KEEGAN - HIGHLY CONFIDENTIAL  
2 A. I just noticed that this is  
3 actually a Monday e-mail. So it's 4:03  
4 Monday.

5 **Q. Yeah.**

6 A. So this was the first deal, right?  
7 And everything I said to you was -- on the  
8 repo had to do with Thursday's deal, not  
9 Monday's deal. So that was an error on my  
10 part giving you that answer. I thought this  
11 was Thursday's deal. Okay? So --

12 MR. STERN: The "this" you're  
13 referring to is Exhibit 301A?

14 THE WITNESS: Yes. 301A.

15 **Q. So let's go back to now you're**  
16 **focused on the fact that it's Monday's deal.**  
17 **What's the 50 billion that Rich Ricci is**  
18 **talking about?**

19 A. I don't know. At that point in  
20 time I don't know. Because at that point in  
21 time we were still going through -- I mean, we  
22 were still going through the assets, and I  
23 probably didn't have my conversation with  
24 Felder until about 3:00 on Monday. And as I  
25 said earlier, Lehman -- one thing they weren't

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2 prepared for certainly was bankruptcy. So  
3 that whole exercise on Monday getting us  
4 information, they had a very difficult time.  
5 So I have no idea where he got his information  
6 of 50 billion from. But he did know the  
7 process we were going to go through at that  
8 point in time which was we were going to go  
9 through and sift through the inventory and  
10 take what we wanted. It was going to be an  
11 asset purchase and so we would take what we  
12 wanted and not take what we didn't want.

13 **Q. And in his e-mail, Rich Ricci's**  
14 **e-mail at the top of Exhibit 301, he makes a**  
15 **reference to you and Mahon.**

16 **Do you see that?**

17 A. Yes.

18 **Q. And he makes a reference to "all**  
19 **good and clean."**

20 **Do you see that?**

21 A. Yes.

22 **Q. That's a reference that you'd been**  
23 **separating out excluded assets from the assets**  
24 **that you wished to have included; is that**  
25 **right?**



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2 A. You got to ask Rich.

3 Q. Well, you were looking to identify  
4 the good and clean assets, right?

5 A. We were looking to identify assets  
6 that we'd be comfortable purchasing, yes.

7 Q. And those would be the good and  
8 the clean ones.

9 MR. STERN: Objection to the form.

10 A. You got to ask Rich.

11 Q. Well, were you identifying assets  
12 that were, you know, of questionable value?

13 A. My assumption was we were going to  
14 take all the assets initially, okay, and that  
15 we were supposed to come up with a value that  
16 we would take them at, that we felt  
17 comfortable taking them at, right?

18 And we knew from the weekend that  
19 Lehman's assets weren't -- you know, weren't  
20 marked tightly, that they were marked very  
21 much on the aggressive side, which isn't  
22 surprising since they were struggling  
23 financially and potentially going out of  
24 business, that they marked things, you know,  
25 less than conservatively, right?

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2 So we knew that going in that we  
3 had to -- we had to get a good mark on them,  
4 or a good reasonable mark on them.

5 Now, the time frame in which  
6 you're doing this in everything is done kind  
7 of, you know, rough numbers. It's not -- you  
8 know, we didn't have time to take every CUSIP  
9 and validate a price for each security. In  
10 fact, none of that was done on Monday. I  
11 mean, we took the information that we had  
12 developed over the weekend which, you know, on  
13 certain inventory that's what we did, we  
14 took -- we did the CUSIP pretty much and came  
15 up with what we thought the value was and how  
16 much we thought we were off.

17 We took that information and kind  
18 of overlaid it on what we were actually being  
19 asked to take on Monday.

20 Q. Did you ever give Rich Ricci a  
21 list of good and clean assets on Monday, the  
22 15th of September?

23 A. Certainly not by 4:03 p.m., no.

24 Q. At some point on Monday?

25 A. Not a list that we called good and

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2 clean. We gave him a list of things we  
3 thought they could buy and at a suggested  
4 price.

5 MR. TAMBE: Let's just take a  
6 short break.

7 (Recess taken.)

8 BY MR. TAMBE:

9 Q. So, sir, I've placed before you a  
10 document marked Exhibit 302A which is a cover  
11 e-mail with a large set of spreadsheets behind  
12 it. I'm not going to quiz you in detail about  
13 the spreadsheets but if you could review the  
14 cover e-mail and flip through the spreadsheets  
15 and I'll ask you some questions.

16 (Document review.)

17 A. Okay.

18 Q. Looking at the cover e-mail and  
19 the attached schedules, is this part of the  
20 effort relating to the transaction we talked  
21 about, the Monday transaction, as opposed to  
22 the Thursday transaction?

23 A. Looks like it, yeah.

24 Q. And it's an e-mail -- the cover  
25 e-mail is an e-mail from Stephen King to

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2 Archie Cox and you're shown as a c.c.

3 Do you see that?

4 A. Yep.

5 Q. And what role did Archie Cox play  
6 in this transaction?

7 A. I don't really know actually. He  
8 was a senior guy. I mean, he was chairman of  
9 the US. So -- but did he have a line  
10 responsibility in this transaction, you know,  
11 I'm not so sure. I mean, he --

12 Q. When you think of the group of  
13 Barclays business people who were leading the  
14 Lehman/Barclays transaction in its various  
15 forms who are the people that come to your  
16 mind?

17 A. Rich Ricci. John Hughes in legal.  
18 I guess myself with respect to the inventory.  
19 Stephen King. Jerry. And Bob Diamond and  
20 Archie. I mean, Archie -- and also Michael  
21 Klein.

22 Q. And of this grouping of people,  
23 the folks who were actually negotiating the  
24 terms of the transaction, would it be a subset  
25 of this group?

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A. Yeah. I would say the terms of the transaction were negotiated by, you know, Rich and Jonathan Hughes. And our counsel.

**Q. And what role did Michael Klein play in all this?**

A. He was an advisor to Barclays over the weekend principally.

**Q. At any time during the September 12th on period, did you have any conversations with Michael Klein about the assets to be purchased?**

A. From what time period are you talking about?

**Q. Starting on the 12th of September onwards.**

A. Yeah. Periodically I had conversations. You'd have to be more specific with your question what you're asking me.

**Q. Do you recall specifically conversations that you had with Mr. Klein about the assets that Barclays was going to purchase from Lehman?**

A. The only conversation -- specific conversation that -- substantive conversation

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that I know -- that I know I had with him was with respect to -- it was on the Friday morning with respect to -- Friday morning, the 19th -- with respect to the -- I don't know what you want to call them. They were called unpledged assets, which was the list of assets that were sitting in Lehman's -- purportedly sitting in Lehman's box that were not pledged against financing principally because they were, you know, some sort of unique security or private security that may be in some cases physical securities that weren't easy to put into repo. That weren't easy to finance.

**Q. And what was your discussion with Mr. Klein about those unpledged securities?**

A. This is on Friday morning and it was again we were asked -- Lehman was trying to come up with additional value to close the gap on the liabilities and to -- and also on the -- to a certain extent on the excluded inventory that we had been delivered that we felt was marked incorrectly.

And one -- there was several items that were proposed as potentially having value

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for Barclays to close that gap and one of them was this list. And I was asked to look through the list to see if we thought the securities were worth what they were putting on the piece of paper to be worth. And actually could do very little with respect to the list because it wasn't a book quite this thick (indicating) but it was thick. Most of it was a lot of zero valued securities which was principally the residuals and junior pieces of their -- of Lehman's asset backed securitization deals they had done through the years that they had held onto or didn't sell.

The bulk of the value -- and I forget what the value of this list was -- but the bulk of the value was made up by a handful of municipal securities which we were able to get some comfort on the pricing that was reasonable based on going to Bloomberg.

There was another security, Navigator, which was a restructured private equity security that I talked to a guy named Bob Mallard about. He ran -- he was the person at Lehman that ran -- I had no idea

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what Navigator was. I knew it was a hundred -- if I remember correctly it was 144 million, so it was a reasonable amount of what the value in this account was. And, you know, is it worth 144 million, I have no idea. So they put me in touch with Bob Mallard and I talked to him about it. And he explained to me what Navigator was. It didn't give me a whole lot of comfort on the value but at least I knew what it was. It was a real operating company.

**Q. What's your understanding of the value of the unpledged assets?**

A. You know, off the top of my head I honestly don't remember.

**Q. There's \$1.9 million that's referenced in some of the e-mails. Does that refresh your recollection?**

A. Could be. I don't remember.

**Q. You said there were several items proposed to plug the gap. The unpledged assets was one of those items. What other items were proposed?**

A. There was an FX clearing account

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which it was purportedly up to a billion  
dollars of good faith deposits in which turned  
out not to be real. It may have been real at  
one point in time but C Corp was the  
settlement agent for Lehman for FX. And I  
know Gerard LaRocco called Citicorp to find  
out what they thought about the value of that  
account. They kind of laughed at him. They  
said, Of course that's gone. They closed out  
all their accounts and used up -- closing out  
their contracts.

There was some exchange traded  
futures that I had nothing to do with and  
don't understand.

There was a couple other dead-ends  
which I don't remember what they are off the  
top of my head.

**Q. Was one of the items 15(c)(3)  
cash?**

A. Might have been. I don't  
remember.

**Q. Is that a term you're familiar  
with?**

A. Restricted cash? Yeah, sure.

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Customer cash?

**Q. Right. Customer cash.**

A. Yeah.

**Q. And are you familiar with the  
notion of customer cash being one of the items  
that was proposed to plug the gap here?**

A. Not really. I mean, I don't know  
how you would plug it with customer cash  
unless they had deposits -- that Lehman had  
deposits within the 15 -- their own 15(c)(3)  
deposits, right? Which that might be their  
money.

**Q. The exchange traded futures that  
you referenced, was that -- were those OCC  
transactions?**

A. I believe they were exchange  
traded futures.

**Q. On what exchange?**

A. I wasn't involved. I just know  
there was a list of five or six items that  
they proposed. You know, can you get us some  
additional value to cover the cost for some  
liability that we were taking on so...

**Q. And you told us the FX clearing**

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account, that was an item that in your opinion  
went nowhere. There was no value there; is  
that right?

A. I was actually in Gerard's office  
when Gerard was on the phone with Citicorp,  
the clearing agent at Citicorp, and the  
clearing agent at Citicorp assured him that  
through the process of liquidating the open FX  
contracts that Lehman Brothers' various  
entities had open with Citicorp, that that  
deposit was fully consumed in that process and  
that there was no value.

**Q. Do you know whether there was any  
value on the exchange traded futures?**

A. I don't know if there was.

**Q. And you don't know one way or the  
other whether there was any additional value  
or accessible value in the 15(c)(3) accounts?**

A. Nope.

**Q. At that time have you heard of any  
excess margin, excess OCC margin that was  
transferred from Lehman to Barclays?**

A. No. I mean, I just wasn't  
involved with that aspect of it, right? I

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don't know anything about futures and exchange  
traded contracts and clearing and settlement.  
It wasn't what I was asked to do.

**Q. Over the week -- the following  
weekend, the weekend of the 20th-21st, did you  
remain involved in aspects of the transaction?**

A. Well, I went home Friday so I  
basically worked Thursday night till 4 in the  
morning. Went to the Four Seasons and slept  
from 4 to 6. Came back at 6. And then Rich  
been to bed at -- you know, 6 to -- he was  
back by 9 I think. And then I worked that  
morning until probably again 2:30, 3:00. Went  
home. Checked in on Saturday morning to try  
to find out what happened at the court  
hearing. Asked if I was needed and was told I  
wasn't needed. So I stayed home. And then I  
ended up having to get on the phone and spent  
really pretty much most of the weekend on the  
phone talking to various Lehman employees that  
we had hoped were coming to join us but were  
talking to other firms about not coming and so  
I talked them out of doing that and coming  
with us instead. So that's that I spent the

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2 weekend doing mostly.

3 Q. With respect to movement of  
4 collateral or valuation of collateral did you  
5 have any involvement in that?

6 A. I didn't do anything in that.

7 Q. How about the following week, the  
8 week of the 22nd, were you involved in any  
9 movement of collateral or valuation of  
10 collateral that week?

11 A. No. Not really. That was --  
12 once -- once the -- you know, we closed on the  
13 trade, got possession of what we got  
14 possession of, that was -- Stephen was the  
15 point person for that. He was the point  
16 person for coordinating with all the other  
17 desks and putting the proper value on it and,  
18 you know, distributing it out to the desks and  
19 hedging it, et cetera. That was his job. He  
20 kept me informed of what he was doing in the  
21 big picture, but I wasn't involved day to day.

22 Q. Do you have any knowledge of a  
23 settlement that was entered into between  
24 JPMorgan, Barclays, LBI, Lehman Brothers,  
25 Inc., the broker/dealer, in December of 2008?

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2 A. I don't know what the terms of the  
3 settlement were if you're asking me that.

4 Q. I'm asking you if you were aware  
5 of the fact of the settlement.

6 A. Yeah. I believe there was a  
7 settlement. I know that after -- so Lehman --  
8 so JPMorgan and -- I believe because they had  
9 operational problems were unable to deliver  
10 securities to us timely on that night. Were  
11 unable to deliver everything that was in  
12 the -- the we thought was in the repo to us.  
13 So they delivered -- and they delivered us  
14 securities late. Our clearing agent stayed  
15 open as late as they could which was well past  
16 what they normally would do. You know, say, 2  
17 in the morning. And we hadn't received -- we  
18 put 45 billion of value out, but by JPMorgan's  
19 measurements they hadn't given us 45 billion  
20 yet. And so they posted another 7 billion in  
21 cash is what I know. We got 7 billion in  
22 cash.

23 And that -- we did have cash. And  
24 then we went to move the cash later apparently  
25 and JPMorgan said you don't have cash. And

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2 obviously there was a dispute about that.

3 Q. And your understanding is that the  
4 settlement was to settle up that dispute.

5 A. Yeah.

6 MR. STERN: You marked 302A. Are  
7 we going to use that?

8 MR. TAMBE: We used it a little  
9 bit. We'll go back and use it some  
10 more.

11 MR. STERN: Okay. I just want to  
12 note for the record that 302A may be a  
13 privileged document at least in part.  
14 I'm not sure. I would have to talk to  
15 some people about that. But I just want  
16 to reserve my position on that.

17 BY MR. TAMBE:

18 Q. So I've put before you, sir, a  
19 document marked Exhibit 144A. Take a moment  
20 to look at that document and let me know when  
21 you're done.

22 (Document review.)

23 A. Okay.

24 Q. And you'll see the bottom of the  
25 document there's an e-mail from Marty Malloy

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2 to J. LaRocco and others.

3 Do you see that?

4 A. Um-hum.

5 Q. Yes?

6 A. Yes.

7 Q. And there's a totalling up of  
8 values and cash amounts.

9 Do you see that?

10 A. Yeah.

11 Q. There's a line item in that e-mail  
12 that says Excess Collateral, 7.19.

13 Do you see that?

14 A. 7.19. Yeah. I see that. Okay.  
15 I see it.

16 Q. You don't know what that means?

17 A. No, I don't know what it means off  
18 the top of my head.

19 Q. And further up there there's a  
20 line that says Repo Cash Settlement 7.00.

21 Do you see that?

22 A. Sorry. I may be looking at the  
23 wrong line on your last question because the  
24 1.7 was on the same line as the repo cash of 7  
25 billion. So is that correct? Is that the 1.7



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2 you were referring to?

3 Q. No. I was asking you to look at  
4 the line that says Excess Collateral.

5 A. Oh, sorry. Sorry, sorry, sorry,  
6 sorry, sorry. Okay. I answered the  
7 question -- I did answer the question  
8 incorrectly because I was looking at the 1.7  
9 trying to figure out what that is.

10 Q. So let's go to the line that says  
11 Excess Collateral, 7.19.

12 A. Sorry. I didn't understand your  
13 question properly.

14 Q. Do you have any understanding of  
15 what that means?

16 A. Yeah. I do have an understanding  
17 of what that means. This BoNY -- I think I  
18 testified earlier that we were trying to find  
19 out how much value we received from the repo  
20 from Lehman Brothers, JPMorgan, and they  
21 couldn't tell us. Okay? BoNY, because it  
22 passed through their clearance systems, has a  
23 rough estimate of what they believe that  
24 number is to be, okay? And gave -- and that's  
25 their -- the total securities in cash received

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2 is the sum of their rough estimates, right?

3 Plus the 7 billion in cash that's posted in  
4 the repo plus another small DTC cash item to  
5 come to I guess \$52.19 billion of value.

6 And then I assume the 45 billion  
7 is a repo cash that -- the cash we sent out to  
8 JPMorgan. And so what is referred to as  
9 excess collateral is the -- probably a better  
10 term. And that is the haircut differential if  
11 you believe BoNY's values.

12 Q. Who's Marty Malloy?

13 A. Marty was a prime brokerage  
14 employee. A security borrow lending. I'm not  
15 sure -- because it was repo I guess he was  
16 involved.

17 Q. After his name on that e-mail  
18 address Marty Malloy it says CFG MGMT. Does  
19 that phrase have any management to you?

20 A. CFG management. Collateral  
21 something -- yeah. Collateral from the  
22 finance group. I have no idea. I don't know  
23 what it means. I don't know definitively.

24 Q. Okay. If you go back to  
25 Exhibit 302A there are a series of numbered

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2 items.

3 Do you see that?

4 A. Yep.

5 Q. And the first numbered item ends  
6 with a question. "Can securities be sold by  
7 LBI without approval at a discount to current  
8 mark?"

9 Do you see that?

10 A. Um-hum.

11 Q. Yes?

12 A. Yeah, I see it.

13 Q. Do you know what that means?

14 A. Not definitively, no.

15 Q. Was it your understanding that LBI  
16 was selling securities to Barclays at a  
17 discount to the current mark?

18 A. This is Wednesday so this was the  
19 Monday night transaction. We did go through  
20 and identify haircuts is the term I would use  
21 as opposed to discounts. But we applied to  
22 the various security line items to account for  
23 the fact that we were buying inventory in  
24 bulk, to account for the fact that we were not  
25 being able to close on the inventory until

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2 Friday at the earliest, to account for the  
3 fact that the markets were melting down, and  
4 that we didn't have certainty of the valuation  
5 that Lehman -- we knew that Lehman had been  
6 aggressive with their valuations and we didn't  
7 have, you know, clear certainty with respect  
8 to what the value of all the securities were.  
9 So there were, you know, haircuts applied to  
10 the inventory.

11 Q. Sir, I'm showing you a document  
12 that's previously been marked as Exhibit 19.  
13 Have you seen this document before today?

14 A. Again, only in prep for this  
15 deposition.

16 Q. Okay. Is it fair to say that  
17 you -- well, do you understand the information  
18 that's contained in this document?

19 MR. STERN: Objection to the form.

20 A. I understand what I've been told I  
21 guess.

22 Q. By counsel?

23 A. By counsel, yeah.

24 Q. Okay. And putting aside anything  
25 you were told by counsel, do you have any



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2 billion of cash out in the market because  
3 markets were so skitterish and so concerned  
4 about, you know, banks failing that we felt  
5 that people might -- if they found that we had  
6 a 7 billion hole, a potential hole in our  
7 balance sheet, people might pull their  
8 financial support. I believe that was the  
9 reason.

10 So to get the settlement we agreed  
11 to forgive the lawsuit. Drop the lawsuit.

12 Q. When did Barclays first now it had  
13 a \$7 billion hole?

14 A. I have no idea. It was -- I mean,  
15 we didn't we had a hole at all because the  
16 cash was put in the account but when they went  
17 to remove it which was, you know, days later  
18 JPMorgan said the cash isn't there so...

19 Q. In some of your prior testimony  
20 you stated that some of the collateral that  
21 was delivered --

22 A. I'm sorry. I missed the beginning  
23 of your question.

24 Q. Yeah. In some of your prior  
25 testimony you had stated that some of the

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2 collateral that was delivered on Thursday  
3 night included securities that Barclays did  
4 not wish to purchase, correct?

5 A. Um-hum. Yes.

6 Q. Did Barclays return that  
7 collateral?

8 A. No, we didn't return the  
9 collateral. I testified that I went to Ian  
10 Lowitt and said, "Ian, you got to take this  
11 back and swap us into the collateral we  
12 bought."

13 And he said, "That's impossible."

14 I should say the collateral we  
15 agreed to buy on Monday night. So collateral  
16 not on the excluded list.

17 And he said, "That's impossible  
18 because our counterparties had been grabbing  
19 -- our repo counterparties have been grabbing  
20 collateral and liquidating it and buying us  
21 in" is the term "on our repo and we don't have  
22 it anymore. So this is what you got."

23 Q. So Barclays kept the collateral  
24 that had been transferred over Thursday night  
25 and you had additional collateral then

1 M. KEEGAN - HIGHLY CONFIDENTIAL  
2 transferred to you on Friday, the items that  
3 we were talking about to fill the gap.

4 MR. STERN: Objection to the form.

5 A. We had the repo collateral from  
6 the Fed that JPMorgan delivered to us. We had  
7 the deposit from JPMorgan. And, to my  
8 knowledge, we had the additional thing that I  
9 knew at the time that we had was the -- or  
10 should have had was the unpledged box. That's  
11 what I knew we were supposed to have.

12 The only thing I'd say is that  
13 that may not be the only thing that we were  
14 supposed to have. There were pieces of the  
15 transaction that I -- you referred to them  
16 earlier, the 15(c)(3). I have no idea whether  
17 they were supposed to have it or didn't have  
18 it. I don't know. And the exchange traded  
19 derivative contracts were one of the things  
20 that were proposed by Lehman for us to have.  
21 But I wasn't looking at it. And I didn't  
22 follow up with it. That was decided for us to  
23 have it or not have it. I don't know.

24 (Deposition Exhibit 305A, document  
25 bearing production number

1 M. KEEGAN - HIGHLY CONFIDENTIAL  
2 BCI-EX-(S)-00036496, marked for  
3 identification as of this date.)

4 BY MR. TAMBE:

5 Q. Sir, I've handed you a one-page  
6 document marked 305A. Would you take a moment  
7 and look at it and let me know when you're  
8 done.

9 (Document review.)

10 A. Okay. I read it. I don't quite  
11 understand it right now.

12 Q. You're anticipating my question.

13 A. No, I'm not anticipating your  
14 question. I just don't -- I'm anticipating  
15 you're going to ask me what it means and I'm  
16 struggling to remember at the time.

17 Q. But you see this is an e-mail  
18 exchange between Jasen Yang, Stephen King, and  
19 yourself.

20 A. Yeah.

21 Q. And it has to do with valuation of  
22 Fed collateral.

23 Do you see that?

24 A. Yeah.

25 Q. Having read this e-mail can you

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**M. KEEGAN - HIGHLY CONFIDENTIAL**  
**explain what this -- the issue that's being**  
**discussed in this e-mail?**

A. Well, my interpretation of it, and I don't know whether it's an accurate interpretation, 18.6 billion of lost Fed collateral, right, so that's collateral that we expected to get from the Fed that was supposedly in the Fed box that JPMorgan was supposed to deliver and didn't deliver, right?

He's saying it was about -- 1.1 billion wasn't able to get prices for. They're mainly structured notes, large potential discount, Yankee bonds, unlikely to have a large discount. When I couldn't get the Barclays price I used the custodian price.

So I guess reading that again I don't know what he means by lost Fed collateral. Whether it's 18.6 of collateral that we got that we didn't anticipate getting or whether it was 18.6 that we were supposed to get and didn't get. I just don't recall right now.

**Q. Going to your e-mail at the top of the page you say if I read this right, "There**

**M. KEEGAN - HIGHLY CONFIDENTIAL**  
**is a \$1.9 billion difference."**

A. Yeah, that's what I'm trying to figure --

**Q. Any idea what that means?**

A. I don't know what -- I'm trying -- I'm trying to figure that out right now. I'm trying to remember what that means. What that was referring to. I just don't remember right now off the top of my head.

**Q. And in the next line you have a reference to 20 -- a swing of 28 billion gross inventory differences. What does that mean?**

A. (Reading document.)

**Q. What does that mean?**

A. That's the one I'm trying to -- I'm stumped on. I know it's my own e-mail. I'm stumped right now.

**Q. Did you play any role -- you can put the document aside, yeah. We're done with the document.**

A. Sorry.

**Q. Did you play any role in the fall of 2008 or early 2009 in helping Barclays' auditors account for the acquisition of the**

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**M. KEEGAN - HIGHLY CONFIDENTIAL**  
**Lehman assets?**

A. No.

**Q. All right. Let's just take a short break.**

A. The auditor -- by the way, the auditor you're referring to is PriceWaterhouse I assume?

**Q. I assume it's PriceWaterhouse. I don't know who all the auditors might be for Barclays.**

MR. STERN: I'm sure it's PriceWaterhouse.

A. Okay. But you're -- the external auditors.

**Q. The external auditors.**

A. No. The answer to that is no.

**Q. Let me ask the follow-up question. Have you worked with any internal auditors at Barclays?**

A. None. Zero. But I was just curious.

(Recess taken.)

BY MR. TAMBE:

**Q. Mr. Keegan, are you aware of any**

**M. KEEGAN - HIGHLY CONFIDENTIAL**  
**sales of assets that were purchased by Barclays from Lehman?**

A. You mean liquidation of the inventory?

**Q. Liquidation of the, yeah, collateral that was transferred over.**

A. I know we did liquidate a lot of it, yeah. Not all of it but...

**Q. And do you know generally the values at which you liquidated it?**

A. No. I don't know.

**Q. And was any of the collateral liquidated by you or was this just something you heard about it?**

A. No. I didn't liquidate any of the collateral.

**Q. And how do you know that you did liquidate a lot of it?**

A. Because that was -- you know, that was the goal. The goal was that we weren't -- owning assets during this time period was not a good thing. So you're trying to hedge it and get your risk down.

**Q. Are you generally familiar with**

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<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 cetera, right? Because they had a huge -- I</p> <p>3 don't know what was reported, 25 billion or</p> <p>4 something like that, secured exposure to</p> <p>5 Lehman. That they would ultimately liquidate</p> <p>6 that exposure and you'd see those securities</p> <p>7 in the marketplace and then we might be a</p> <p>8 natural buyer for something like the B note</p> <p>9 for Pine since we owned the A note already.</p> <p>10 But we never saw the paper come out.</p> <p>11 Q. I'm sorry. What was the last --</p> <p>12 A. We never saw the paper come out</p> <p>13 so...</p> <p>14 (Deposition Exhibit 307A, document</p> <p>15 bearing production numbers</p> <p>16 BCI-EX-00053873 through BCI-EX-00054261,</p> <p>17 marked for identification as of this</p> <p>18 date.)</p> <p>19 BY MR. WOOD:</p> <p>20 Q. I've handed you what's been marked</p> <p>21 as Exhibit 307A. As you'll see it's an e-mail</p> <p>22 chain with a pretty hefty attachment. Feel</p> <p>23 free to look at the attachment if you'd like</p> <p>24 but I'm really just going to ask you some</p> <p>25 questions about the e-mails themselves.</p>	<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 A. Okay.</p> <p>3 MR. STERN: So, Mike, you may want</p> <p>4 to read through the e-mails and then</p> <p>5 just glance at the attachments.</p> <p>6 THE WITNESS: Yeah, no. That's</p> <p>7 fine. I just want to see what this is</p> <p>8 to see if I understand it.</p> <p>9 MR. WOOD: And just so the record</p> <p>10 is, clear this, is an e-mail and the</p> <p>11 first page is BCI Exhibit 00053873.</p> <p>12 MR. STERN: Well, it's Bates</p> <p>13 number BCI-EX-0053873 through -- the</p> <p>14 numbers appear to be cut off on this</p> <p>15 copy. So, Mike, just let us know after</p> <p>16 you've had time to review this.</p> <p>17 THE WITNESS: Okay. The problem</p> <p>18 is there's two bids floating around.</p> <p>19 I'm trying to figure out which one this</p> <p>20 is.</p> <p>21 (Document review.)</p> <p>22 A. Okay.</p> <p>23 Q. If you look on page 2 of the</p> <p>24 e-mail, so the earliest e-mail</p> <p>25 chronologically, it's an e-mail from Jasen</p>
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<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 Yang, Monday, September 22nd. The subject is</p> <p>3 Financing Facilitate Schedule. He writes,</p> <p>4 "Robert, James, I've attached the schedule</p> <p>5 produced by Barclays ops of the collateral</p> <p>6 currently held at BoNY under the repo</p> <p>7 financing provided to Lehman (with a total</p> <p>8 BoNY market value of approximately 45</p> <p>9 million). It appears to differ substantially</p> <p>10 from the file received from Lehman on Friday</p> <p>11 evening. We're looking at the differences</p> <p>12 now."</p> <p>13 Just one first point of</p> <p>14 clarification. That 45 million, do you think</p> <p>15 that's accurate or is that supposed to be 45</p> <p>16 billion?</p> <p>17 MR. STERN: Objection to the form.</p> <p>18 A. Total BoNY market value 45</p> <p>19 billion. I would -- I'm speculating but I</p> <p>20 think it's probably billion he's probably</p> <p>21 referring to. I said there were several</p> <p>22 different versions of BoNY collateral value</p> <p>23 list put in front of us. There was a 47 list,</p> <p>24 there was a 45 list, there was a 52 list.</p> <p>25 Q. And when you're referring to --</p>	<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 I'm sorry.</p> <p>3 A. There was another e-mail I was</p> <p>4 presented earlier which is Exhibit --</p> <p>5 MR. STERN: 144A.</p> <p>6 A. 144A, right?</p> <p>7 So it says Total securities and</p> <p>8 cash received 52.19, right? That</p> <p>9 theoretically is BoNY's valuation in effect of</p> <p>10 the cumulative assets of what we got. It's</p> <p>11 one of many evaluations they had. They had a</p> <p>12 45 one. There was a 47 one floating around.</p> <p>13 So, you know, at the end of the day what I was</p> <p>14 trying to get a handle on was how much value</p> <p>15 did we actually receive to do the repo. The</p> <p>16 Fed repo. And we couldn't get it from Lehman.</p> <p>17 And we couldn't get it from JPMorgan. We</p> <p>18 tried to get it from BoNY but BoNY just kept</p> <p>19 giving us different numbers. So I think</p> <p>20 that's what he's referring to.</p> <p>21 Q. And then if you look at the first</p> <p>22 page of the e-mail string, the second e-mail</p> <p>23 down from Robert Azerad dated Monday,</p> <p>24 September 22nd and, again, it looks like you</p> <p>25 are not on this but it was forwarded to you.</p>

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<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 A. Off the top of my head I don't</p> <p>3 remember specifically. I do know -- I think I</p> <p>4 know what she's talking about. But I don't</p> <p>5 know what the security actually is. But it's</p> <p>6 another one of the -- it's another one of the</p> <p>7 Lehman structured finance trades where they</p> <p>8 basically were taking their loan books,</p> <p>9 turning it into AAA securities so they could</p> <p>10 post it with the Fed and get the funding.</p> <p>11 Q. And so is that what you understand</p> <p>12 the \$1.1 with JPM to refer to at the beginning</p> <p>13 of the e-mail?</p> <p>14 A. That JPM is holding 1.1 billion of</p> <p>15 SAS and we got 80 million of it delivered to</p> <p>16 us.</p> <p>17 Q. Okay. I don't have anything</p> <p>18 further on that document.</p> <p>19 Mr. Keegan, were you involved in</p> <p>20 any way in the creation of any schedules --</p> <p>21 actually, strike that.</p> <p>22 Were you involved in any</p> <p>23 discussions with Lehman Brothers employees</p> <p>24 regarding any schedules of unencumbered</p> <p>25 clearing box assets at DTC?</p>	<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 A. Yeah. I referred to it several</p> <p>3 times as the unpledged asset schedule. Yeah.</p> <p>4 Q. And what was your involvement in</p> <p>5 that?</p> <p>6 A. Friday morning, the 19th, I was</p> <p>7 called into Rich's office --</p> <p>8 Q. And that's Rich Ricci?</p> <p>9 A. Rich Ricci. Who was working out</p> <p>10 of the Lehman office.</p> <p>11 And I was presented this schedule.</p> <p>12 I think it was Paolo Tonucci may have provided</p> <p>13 it to Rich and Paolo may have been in the room</p> <p>14 at the time. It was Paolo or anybody else.</p> <p>15 It was definitely a Lehman employee. And they</p> <p>16 said that this was the schedule of</p> <p>17 unencumbered assets that they could provide</p> <p>18 us, they could get -- you know, incorporate in</p> <p>19 the deal and give to us if we wanted it for</p> <p>20 the values that were indicated.</p> <p>21 So I was asked by Rich to take a</p> <p>22 quick look at the values and try to</p> <p>23 substantiate the values and determine whether</p> <p>24 we thought this was something we thought had</p> <p>25 value or not and whether we would be willing</p>
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<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 to take it as part of the deal, payment as</p> <p>3 part of the deal.</p> <p>4 Q. And what did you conclude?</p> <p>5 A. That it did have value and we</p> <p>6 should take it.</p> <p>7 Q. And just to be clear, unencumbered</p> <p>8 box -- I'm sorry. The unencumbered assets you</p> <p>9 were referring to were at DTC?</p> <p>10 A. I don't remember if they D -- I</p> <p>11 don't remember if they were DTC or whose</p> <p>12 assets they were. I couldn't tell you they</p> <p>13 were all DTC because I believe some of them</p> <p>14 were at JPMorgan, in fact.</p> <p>15 I mean, I've been led to believe</p> <p>16 that the Navigator stock which to my knowledge</p> <p>17 to this day we still haven't gotten is sitting</p> <p>18 in safekeeping at JPMorgan. I have no idea if</p> <p>19 that's a fact or not.</p> <p>20 Q. Do you recall whether you came up</p> <p>21 with a number for the valuation of these</p> <p>22 unencumbered assets?</p> <p>23 A. No. It was kind of take it for</p> <p>24 what's on the piece of paper or don't take it.</p> <p>25 Because most of the value was in like five or</p>	<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 six, maybe eight max, muni securities. I</p> <p>3 believe these were munies. And then</p> <p>4 Navigator. And on the muni securities we were</p> <p>5 able to go to Bloomberg and actually get a</p> <p>6 price but that for all -- you know, for all</p> <p>7 intents and purposes that was Lehman's price.</p> <p>8 So I have no idea if that was a good price or</p> <p>9 not.</p> <p>10 But we weren't able to do much</p> <p>11 more than that with that list. And we had</p> <p>12 Navigator and, you know, the bottom line I</p> <p>13 guess is you weren't getting anything else.</p> <p>14 There wasn't anything else to give us. So we</p> <p>15 could take it or not take it.</p> <p>16 Q. Do you recall any other assets</p> <p>17 besides the munies and the Navigator?</p> <p>18 A. What was on that list, the list</p> <p>19 was yea thick (indicating). This might be the</p> <p>20 list for all I know.</p> <p>21 MR. STERN: Yea thick is how</p> <p>22 thick?</p> <p>23 THE WITNESS: An inch. Inch and a</p> <p>24 half.</p> <p>25 A. Most of that list was comprised of</p>



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1 M. KEEGAN - HIGHLY CONFIDENTIAL  
2 in the marketplace, and they do that  
3 mathematical extension, that is one of the  
4 several numbers that they came up with. Okay?  
5 They came up with a 45 billion number.  
6 There's another e-mail that talks about they  
7 came up with a \$47 billion number. Another  
8 e-mail talks about -- this is all in the  
9 course of like, you know, six hours.

10 So, you know, I wouldn't say it's  
11 a -- we didn't put a whole lot of stock in it,  
12 right? So...

13 **Q. And earlier you testified that if**  
14 **you could believe Bank of New York's value.**  
15 **Is that what you meant by if you could believe**  
16 **their value?**

17 A. Yeah. If you could believe their  
18 value we would have 50 -- we would have 7  
19 billion of haircut.

20 **Q. And aside from what you just**  
21 **testified about the values shifting up and**  
22 **down, did you have any other reason not to**  
23 **believe Bank of New York's value?**

24 A. Yeah. Absolutely.

25 MR. STERN: Objection. Wait,

1 M. KEEGAN - HIGHLY CONFIDENTIAL  
2 wait, wait, wait. Objection to the  
3 form.

4 Can you repeat the question,  
5 please, Francis?

6 (Record read.)

7 A. The only reason that -- the only  
8 thing that they would be -- would competently  
9 value, okay, were things like exchange traded  
10 equities that were very liquid. Liquid  
11 corporate debt. Treasuries. They'd probably  
12 put a pretty good price on that stuff.

13 Any kind of structured paper,  
14 asset-backed paper, all that stuff, they've  
15 never seen it before. They haven't been  
16 provided prices. They'd have no clue what  
17 that really -- what that paper should really  
18 be valued at. Lehman didn't have it valued  
19 right.

20 **Q. Where would you go to get values**  
21 **for that paper?**

22 MR. STERN: Objection to the form.

23 Can I hear that again?

24 (Record read.)

25 A. You would go to Bloomberg and

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1 M. KEEGAN - HIGHLY CONFIDENTIAL  
2 you'd find out what it was. If you didn't  
3 what the security was you'd get the  
4 prospectus, you'd take a look at it. You'd  
5 see what the security was. You'd get the cash  
6 remittance reports if it's an ABS security.  
7 You'd look at what -- at how the security's  
8 actually performing. You'd put a projection  
9 of what you think cash flow is going to be out  
10 of the securities and you'd value that from  
11 those cash flows. That's how you come up with  
12 a value.

13 **Q. Did you personally value any of**  
14 **the securities transferred in the sale**  
15 **transaction?**

16 A. No. I didn't value any of the  
17 securities.

18 **Q. Anyone from your team do the**  
19 **valuations?**

20 A. Stephen King. When you talk to  
21 him about that information if you talk to him  
22 he would have much -- give you much better  
23 information on that than I could give you on  
24 that.

25 MR. DAKIS: Nothing further.

1 M. KEEGAN - HIGHLY CONFIDENTIAL

2 MR. STERN: We'll just take a  
3 break. I may have some questions.  
4 Let's go off the record.

5 (Recess taken.)

6 EXAMINATION BY

7 MR. STERN:

8 **Q. Let's go back on the record.**

9 **Mr. Keegan, from your perspective**  
10 **what was the purpose of the haircut in the**  
11 **reverse repo that was the basis of the Fed**  
12 **replacement transaction?**

13 MR. TAMBE: Objection to the form.

14 Lack of foundation.

15 **Q. Go ahead.**

16 A. So the repo -- the Fed was  
17 providing financing to Lehman Brothers. It  
18 was ordinary course repo. And they provided  
19 haircuts that -- a repo provider takes  
20 haircuts because I'm giving you cash and I'm  
21 getting back a security. That security is  
22 subject to market movements. It's subject to  
23 liquidity risk. And if you have to liquidate  
24 it will take a while to liquidate it. And  
25 that haircut is supposed to be the cushion



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that's provided to the financier so that he has a reasonable probability to recover the amount of his loan from the security if the counterparty defaults and can't pay it back.

**Q. And is that the way it's supposed to work in a normal market?**

**A.** Well, yeah. That's the way in the normal market it works. But the Fed couldn't have anticipated Lehman's bankruptcy either. I doubt they anticipated Lehman's bankruptcy, you know, weeks ahead of time. So the haircuts that they were using were traditional haircuts that would be in the normal market and a market that is deteriorating rapidly as the market did after Lehman Brothers' bankruptcy, you know, those haircuts wouldn't necessarily be sufficient to protect you against market movements during the period of time it would take you from the time you took the possession of the collateral to liquidate it.

**Q. Now, let's turn to the period you testified to from late on Thursday, September 18th going into Friday, September 19th.**

M. KEEGAN - HIGHLY CONFIDENTIAL

**Do you have that time frame in mind?**

**A.** Okay.

**Q. In that time frame why from your perspective did Barclays need an additional value cushion beyond the repo haircut?**

**A.** I mean, the first reason why we were being delivered securities that, based on the prior work that we did over the weekend, the prior weekend, based on the fact that we didn't come to an agreement with Lehman on -- on adjusting the value of the securities and we were getting those securities, that the haircut that we were getting -- that those securities that we were getting were overvalued and therefore they were in effect being used -- they were burning up the haircut, they were using it up, and that needed to be replaced.

**Q. Did anybody ask you if there was any excess available through the repo?**

**A.** Yeah, we were asked --

**MR. TAMBE:** Objection to the form of the question.

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M. KEEGAN - HIGHLY CONFIDENTIAL

**A.** Yeah, I was asked by I believe Rich Ricci how much did we think we might have in terms of "excess value" to pay for certain liabilities that Barclays was absorbing in the transaction. And, you know, I thought the question was -- the question was naive under the circumstances.

And, you know, again, we couldn't tell exactly what we had and didn't have at that point in time. And we knew that what we did have, while it was done on haircuts that were -- you know, if it were a normal market and they were done at haircuts that assumed the securities were valued properly. I mean, if they weren't valued properly, and some of them were weren't valued properly, then they were overvalued. And, therefore, the haircut wasn't adequate to protect us against the risk that was inherent in Lehman Brothers were taking itself, never mind to have excess to pay for liabilities.

**Q. Turning back to Exhibit 144A and looking at the figures that are listed on this document, from your perspective were any of**

M. KEEGAN - HIGHLY CONFIDENTIAL  
**the figures listed here reliable?**

**MR. TAMBE:** Objection to the form of the question.

**A.** The repo cash amount was the cash that we sent out to JPMorgan so that's a good number.

**Q. And what is that number?**

**A.** 45 billion.

We thought the repo cash amount on the deposit that was at JPMorgan, the 7 billion was a good number as well, but that was ultimately taken back by JPMorgan.

**Q. What about the rest of the figures?**

**A.** There'd be aspects of BoNY's valuations that would be okay, but there would be significant portions of it that weren't which kind of takes the whole -- you know, renders the whole number not reliable so...

**Q. Going back to the Monday, September 15th, discussions between you and people at Lehman concerning haircuts and valuation adjustments on certain securities, were there any disagreements between you and**

M. KEEGAN - HIGHLY CONFIDENTIAL

the people at Lehman?

A. This is Monday.

Q. This is on Monday the 15th.

A. Yeah. There was -- there was a number of disagreements, right? That's in part the context of the exclude list. We couldn't come to an agreement on -- we disagreed with their values. We couldn't come to an agreement on their values. So we just said, Fine, you know, you own it, you know, keep it. We won't take it so...

MR. STERN: I have no further questions.

MR. TAMBE: Just a couple of follow-up questions.

\* \* \*

EXAMINATION BY

MR. TAMBE:

DI Q. When you took the break before your own lawyer began questioning you did you discuss the content of your testimony with your lawyer?

MR. STERN: I'm going to object and I'm going to instruct you not to

M. KEEGAN - HIGHLY CONFIDENTIAL

answer.

DI Q. Did you discuss the questions that Mr. Stern was going to ask when you came back from the break?

MR. STERN: I'm going to instruct you not to answer.

DI Q. And did you discuss with Mr. Stern the answers that you were going to give in response to those questions?

MR. STERN: Again, I'll instruct you not to answer.

Q. On the Fed repo that you testified about in response to Mr. Stern's questions, do you know what the size of the Fed financing to Lehman was the week prior to the week in question? So the week that began on the 8th of September?

A. No, I don't.

Q. And do you know what the haircut schedule was that was charged by the Fed during that week?

A. Precisely, no, I don't. If you're asking about the adjustment that week, I don't know.

M. KEEGAN - HIGHLY CONFIDENTIAL

Q. Do you know of any adjustments in the haircut schedule proposed by the Fed either on Friday, September 12th, or Monday, September 15th?

A. No.

MR. TAMBE: No further questions.

MR. STERN: I think we're done.

Off the record.

(Time Noted: 12:39 p.m.)

\_\_\_\_\_  
MIKE KEEGAN

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 2009.

C E R T I F I C A T E  
STATE OF NEW YORK )

: ss.

COUNTY OF NEW YORK )

I, FRANCIS X. FREDERICK, a Notary Public within and for the State of New York, do hereby certify:

That MIKE KEEGAN, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of August, 2009.

\_\_\_\_\_  
FRANCIS X. FREDERICK

1  
2 UNITED STATES BANKRUPTCY COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS Case No. 08-13555(JMP)  
8 HOLDINGS, INC., et al, (Jointly Administered)  
9 Debtors.

10 -----x

11  
12 \* \* \*HIGHLY CONFIDENTIAL\* \* \*

13 DEPOSITION OF STEPHEN KING

14 New York, New York

15 September 10, 2009

16  
17 Reported by:

18 MARY F. BOWMAN, RPR, CRR

19 JOB NO. 24299  
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<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 STEPHEN KING,</p> <p>3 called as a witness by the parties,</p> <p>4 having been duly sworn, testified as</p> <p>5 follows:</p> <p>6 EXAMINATION BY</p> <p>7 MR. HINE:</p> <p>8 Q. Good morning, Mr. King.</p> <p>9 A. Good morning.</p> <p>10 Q. We met briefly off the record. My</p> <p>11 name is Bill Hine. I am from Jones Day, which is</p> <p>12 the law firm representing, or acting as special</p> <p>13 counsel for Lehman Brothers Holdings, Inc. in</p> <p>14 connection with the bankruptcy proceeding that's</p> <p>15 ongoing, and this deposition is related to that</p> <p>16 proceeding.</p> <p>17 Have you ever been deposed before?</p> <p>18 A. No.</p> <p>19 MR. STERN: Can we just introduce the</p> <p>20 other people in the room.</p> <p>21 MR. HINE: Sure. Myself from Jones</p> <p>22 Day, and my associate is George Spencer, who</p> <p>23 will be joining us shortly.</p> <p>24 Do you want to go around the table?</p> <p>25 MR. OXFORD: Neil Oxford with the law</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 firm of Hughes Hubbard &amp; Reed. We represent</p> <p>3 the SIPA trustee, and my colleague is Fara</p> <p>4 Tabatabai.</p> <p>5 MR. DAKIS: I'm Robert Dakis. I'm</p> <p>6 from the law firm of Quinn, Emanuel,</p> <p>7 Urquhart, Oliver &amp; Hedges, and we represent</p> <p>8 the official committee of unsecured</p> <p>9 creditors.</p> <p>10 MR. LAYDEN: David Layden from Jenner</p> <p>11 &amp; Block.</p> <p>12 MR. HINE: This is Ingrid Christian,</p> <p>13 who has lost her voice, from Alvarez &amp;</p> <p>14 Marsal, so I will do the honors of</p> <p>15 introducing her.</p> <p>16 BY MR. HINE:</p> <p>17 Q. Mr. King, as I'm sure your counsel has</p> <p>18 explained, I am going to ask you a series of</p> <p>19 questions. You are going to provide the answers</p> <p>20 as best you can.</p> <p>21 I did want to alert you to one</p> <p>22 procedural rule we have here. From time to time</p> <p>23 during the deposition, your lawyer will</p> <p>24 undoubtedly state an objection or make some kind</p> <p>25 of statement on the record as to the form of my</p>
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<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 question.</p> <p>3 MR. STERN: Very unlikely.</p> <p>4 Q. I just want to let you know that does</p> <p>5 not relieve you of the obligation to answer the</p> <p>6 question. It is just Jack being Jack. It is Jack</p> <p>7 doing his job, stating objections to the form of</p> <p>8 the question.</p> <p>9 In that regard, I will undoubtedly ask</p> <p>10 a confusing question or a question that misuses a</p> <p>11 term that you folks in your profession use all the</p> <p>12 time. I feel like I am learning a new language</p> <p>13 here in some sense. So please correct me if I</p> <p>14 make a mistake with the term or abbreviation or</p> <p>15 some kind of concept, because I really do want to</p> <p>16 ask a clear question so you can then give me a</p> <p>17 clear answer. OK?</p> <p>18 A. Um-hm.</p> <p>19 Q. And if at any time you need a break,</p> <p>20 let me know. This is not an endurance test, so</p> <p>21 just let me know if you need a break.</p> <p>22 A. Sure.</p> <p>23 Q. Can we start with your title at</p> <p>24 Barclays? What is your title?</p> <p>25 A. I am managing director and head of a</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 group called PMTG.</p> <p>3 Q. And PMTG stands for what?</p> <p>4 A. Portfolio mortgage trading group.</p> <p>5 Principal mortgage trading group. I forgot what</p> <p>6 the P was. It has been so long since we named it.</p> <p>7 Q. How long have you held that title?</p> <p>8 A. MD I have had for three, four years, I</p> <p>9 think, and the PMTG group was formed in late 2007.</p> <p>10 Q. Could you describe for me briefly your</p> <p>11 duties in this position?</p> <p>12 A. I run the group. It is ostensibly a</p> <p>13 trading and risk management group. It is -- once</p> <p>14 upon a time its primary asset was mortgages and</p> <p>15 mortgage-related securities and derivatives</p> <p>16 thereon.</p> <p>17 We manage a portfolio of assets which</p> <p>18 the bank owned that were mortgage assets, and we</p> <p>19 also have a proprietary trading activity.</p> <p>20 Q. Who do you report to directly?</p> <p>21 A. I report to Eric Bommensath.</p> <p>22 Q. And do you know his title?</p> <p>23 A. He is global head of -- global head of</p> <p>24 fixed income, I think, and there are some other</p> <p>25 bits to it, too.</p>

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Q. And who reports directly to you?

A. Do I need to list all of them?

Q. No. I'm just interested in the principal folks that report to you directly.

A. The team is -- well, the team is slightly different today than it was a few months ago. It is about 30 or so people. They are -- the senior folks are -- a number of them are senior traders who trade a range of securities. I can give you their names if you like, if it is relevant, for those traders, and then there are also operations and risk management personnel as well.

Q. Could you give me the heads of the -- let me just ask it this way: Is your group broken into separate divisions or --

A. Separate not divisions but functions. It is one trading operation, but within that, we have different products, different risks. Therefore, the group is organized along those risks. But it is really -- in the terminology of a bank, it is one desk.

Q. OK. Does Mr. Yang report directly to you?

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A. Yes, yes. Jasen reports directly to me.

Q. Is it fair to say that you held this same position during the week of September 15, 2008?

A. Yes.

Q. And --

MR. STERN: I am just going to put out the blank September 2008 calendar, just in case Mr. King needs to reference it.

MR. HINE: That's a good idea.

A. It is fair to say that this group came into existence or was derived from another group which I ran in 2007 in a response to the crisis in credit markets and mortgage-related assets. So therefore, the group's character has changed in response to those conditions over the two years, or three years. I guess it is going on towards three years now.

One of those things that prompted change was the bankruptcy or seizure of Lehman itself. So we expanded the group in response to the need to manage the substantial portfolio of risks and assets which the bank had taken on as a

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result of that acquisition. So there is a slight change in character immediately prior to and immediately following the purchase.

Q. When you say that acquisition, you are meaning the acquisition of Lehman assets?

A. The Lehman assets, yes.

Q. As you can probably expect, most of this deposition is going to center around the week of September 15.

A. Right.

Q. Could you give me just a general description of your role in connection with the Lehman acquisition during that week?

A. Yes. My -- we are a -- I forgot P is principal and not portfolio. We are a principal risk taking or risk managing unit, so -- and essentially we were -- we manage or managed illiquid risks, particularly difficult to trade risks, particularly things like mortgages, mortgage-backed securities.

So during this week and in the lead up to the week, our job was -- my job was to facilitate in gathering estimates as best as possible in a very short period of time for the --

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for useful marks or valuations or prices for various securities that were part of the various different proposed purchase -- asset purchases, and then the on boarding of this risk and then the risk management of that risk. That was our function.

Q. When you say illiquid risks or illiquid assets, is there a separate unit within Barclays that performs your function with respect to more liquid assets?

A. No. A -- I mean I guess the answer probably is yes, at some point. It may be it would be Treasury or it would be something else in the bank. For the most part, banks don't hold large amounts of liquid risks, that trading functions -- the reason this group was formed was to deal with the fact that these are incredibly difficult assets to dispose of.

Q. I understand.

A. And they trade, many of them trade by appointment, meaning there is no exchange or obvious market that you can easily trade the assets.

So we all, we do use liquid



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2 instruments and liquid assets in the risk  
3 management of these illiquid assets, so we trade  
4 everything. But that's really the reason for the  
5 existence of the business.  
6 Q. I understand.  
7 Before we get into the week of  
8 September 15, is your group separate and distinct  
9 from something I see referred to as PCG?  
10 A. PCG is a control function. So  
11 that's -- we are a trading group as opposed to  
12 a -- so we work, I work for Eric Bommensath, who  
13 works for Jerry in the business, if you like, as  
14 opposed to product control, which is a control  
15 function which reports up ultimately into Patrick.  
16 Q. Patrick Clackson?  
17 A. Yes.  
18 Q. So just I'm trying to picture the  
19 structure of Barclays. The PCG group reports  
20 under his reporting line, not yours, correct?  
21 A. PCG is a firm-wide function. It is  
22 product control group, so it is a control  
23 function. It deals with -- our interaction on a  
24 daily basis with product control is to insure that  
25 we have mandates to trade, that we are marking our

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2 A. The same.  
3 Q. Meaning --  
4 A. That we were provided a list of  
5 securities and assets that were -- at least what  
6 we understood were owned or held by -- the 14th is  
7 prior to the bankruptcy -- up to the bankruptcy of  
8 LBM, so that then we were looking at the assets of  
9 Lehman Brothers in its entirety.  
10 Q. OK.  
11 A. And then -- and there, our function  
12 was to look at just the mortgage-related assets of  
13 the Lehman Brothers overall group. But the  
14 function was then the same, so assess estimates of  
15 value or prices for categories of assets, and we  
16 never really got to the risk management stage,  
17 obviously because no transaction occurred.  
18 Q. When you say assess the category or --  
19 categories of assets, were you provided a list of  
20 all the CUSIPs that Lehman held at the time or --  
21 A. We were provided various lists of  
22 CUSIPs or other such descriptions of assets that  
23 Lehman held. I mean in the lead up to the 14th,  
24 it was -- because it was the whole Lehman entity,  
25 there were other assets, too, that weren't

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2 books appropriately, that we are reporting  
3 appropriately, and that all of the things that we  
4 have to do on a normal basis are administered in  
5 such a way that they can roll up into the firm's  
6 books and records, et cetera, appropriately.  
7 Q. Can we talk specifically about the  
8 week of September 15, and just to set some  
9 parameters in case you are as bad with dates as I  
10 am, September 15 is the date that Lehman Brothers  
11 Holdings declared bankruptcy.  
12 Can I ask you this question first.  
13 You are aware there was some discussions between  
14 Barclays and Lehman prior to that filing of  
15 bankruptcy?  
16 A. Yes, yes.  
17 Q. Did you have any involvement in those  
18 discussions?  
19 A. Yes.  
20 Q. Could you describe for me generally --  
21 and again we are talking about the weekend of,  
22 say, the 12th, 13th and 14th of September, right?  
23 A. Yes.  
24 Q. Could you just describe for me  
25 generally your role in those sessions?

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2 securities. For example, loan portfolios in  
3 Europe, so they didn't have CUSIPs. But we would  
4 also attempt to assess some kind of price for  
5 those based on some simple analysis.  
6 Q. Your mandate during that period was  
7 beyond just securities, it was any illiquid asset?  
8 A. No. Then we were really strictly  
9 mortgage or asset-backed type assets. There was  
10 an overall coordination of many groups. At that  
11 point there were many groups or many trading desks  
12 at Barclays in Europe and the U.S. that were  
13 attempting to assess the entire Lehman Brothers  
14 balance sheet or list of securities and assets.  
15 So we were then just one, we were focused on one  
16 part of that.  
17 Q. And did you come to New York to  
18 participate in those discussions?  
19 A. We are based in New York.  
20 Q. So you participated in meetings with  
21 Lehman folks during that weekend?  
22 A. I don't know whether we did by that  
23 weekend. That was really -- I thought that was --  
24 I thought in the lead up to that week, there was a  
25 data room that was set up by Lehman. I never went

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to it actually, but one of the people that works for me did.

I would have been at Lehman over the weekend, but most of what we did was phone calls to people and -- I mean in reality, there is a -- it is a -- there were many, many -- this was a phenomenally complex situation just because of the number of line items. So in many respects, the approach that we took to the analysis was high level down rather than bottom up, meaning to have accurately assessed the value of an individual security by reference to talking to a trader when there were then, say, 10,000 line items was less useful than being able to initially categorize things as residential mortgage-backed securities, credit card securities, et cetera, et cetera, subordinate, senior, and then have broad valuations based on where we know similar markets trade, and then each day we just refined.

Q. OK, I think I understood what you said. When you said bottom up, you mean if you had the luxury of time, you -- one might go CUSIP by CUSIP or security by security and try to assess the value of an individual security?

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A. Right, right.

Q. But you didn't have the luxury of time. Is that what I hear you saying?

A. Luxury of time and even time -- then markets are actually moving, so I would have to be -- if you had infinite resources for a very short period of time, then you might try to go bottom up.

As -- once we had a definitive set -- it was really -- so the first exercise was -- and this was repeated as we went through the 15th, through the various iterations of the asset population, was one, do we have a complete description of the population, can we categorize the population, can we estimate valuations for the categories within the population, can we refine and improve those estimates, increasingly becoming more granular. Have we engaged the appropriate desks, trading desks within Barclays to -- or existing Lehman desks, to provide us as much input to where markets are or what securities -- what a particular security is.

And then the last part was how do we risk -- what is the risk associated with these

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categories of securities and how might we either plan to dispose of the assets or in the short term risk manage the assets.

Q. When you say risk manage, you mean hedging?

A. For example, hedging, yeah.

Q. So the process you have described, is it correct to say it started on the weekend of the 13th or 14th and then continued in some form throughout the week of the 15th?

A. Yes.

Q. And how did it change -- well, as I understand it, on the 14th, it was concluded that there was no deal between Barclays and Lehman, correct?

A. That's what I understand, yeah.

Q. And how did you learn that the talks were going to start again?

A. I think it was at some point on the 15th or 16th, we were once again asked to look at another population of assets that was a subset of the population of assets that we had been looking at the previous week.

Q. That was going to be my question. How

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did the population of assets change from the weekend to the 15th?

A. It was now the assets of LBI or what we thought were the assets of LBI as opposed to the assets of, say, LB. Because there we were looking at all assets regardless of whether they were held by LBH or LBIE or -- so, but by that point we knew we were just looking at or what we thought we were looking at was the assets that were included in the balance sheet for LBI.

Q. OK. Now, were you provided additional information on the 15th or did you just use the information you had previously acquired or --

A. No, we -- I'm not sure -- we may have been provided some of that information the previous week. Again, because the scope of the exercise had narrowed from the entire -- you know, us participating in a small part of assessing the overall assets of Lehman Brothers to a larger part of a much -- a subset of that overall population, which was now just the LBI assets.

In keeping with the process of improved granularity of analysis as the population shrunk or the -- we were able to look at a more

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2 refined list of assets on the 15th and spend more  
3 time. But we definitely reused the -- where there  
4 was overlap with analysis that we had done the  
5 previous week, we definitely reused it.

6 Q. Let's start with this document. I  
7 think -- well, during the -- now we are in the  
8 week of the 15th, starting Monday. Ultimately  
9 some kind of agreement was concluded between  
10 Lehman and Barclays on the 16th, correct?

11 A. In relation to --

12 Q. Well, an agreement was signed on the  
13 16th. Are you aware of that?

14 MR. STERN: Objection to the form.

15 A. I don't --

16 Q. Did you ever see what has been termed  
17 the asset purchase agreement in connection with  
18 the Lehman-Barclays transaction?

19 A. I have seen drafts of it.

20 Q. Were you involved in the -- I am just  
21 trying to get a scope of what your involvement  
22 was. Were you involved in the back and forth  
23 negotiations as to the terms of the asset purchase  
24 agreement?

25 A. No, no.

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2 we sit down and have conversations with people,  
3 very, very limited.

4 Q. Well, I understand the providing of  
5 information part of the discussion, but separate  
6 from that, was there a back and forth as to the  
7 valuation or marking of particular Lehman assets  
8 that were the subject of the discussions?

9 A. I don't think so really. The -- on  
10 the 15th and 16th. No. I think for the most part  
11 the 15th and 16th was trying to establish have we  
12 got -- these exercises are -- they take a lot of  
13 effort.

14 Q. Sure.

15 A. And the reason why we were involved  
16 was because we had some proficiency in dealing  
17 with understanding new populations of securities  
18 or assets, because that's what we had been doing  
19 for the last year and a half.

20 So one thing that we -- one thing that  
21 is critical is to insure that you are not spending  
22 a tremendous amount of time working on things that  
23 were irrelevant. So the first thing we need is to  
24 be sure that we have got the correct population.  
25 If we are spending time analyzing something that

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2 Q. In the course of your -- well, let me  
3 get back to the 15th. On the 15th and 16th, did  
4 you participate in meetings between Barclays and  
5 Lehman?

6 A. I don't think so. I mean we may have  
7 done on the 16th, but if it was, it was strictly  
8 to do with identifying the -- you know, a trader  
9 who may have been able to provide us clarity about  
10 what a particular security was. But I think --  
11 but there wasn't an awful lot of that that we had  
12 to do.

13 And it was very -- you know, we did  
14 more of that in the previous week when we were  
15 trying to understand what the asset population  
16 was. That was really when we needed some  
17 assistance with people from Lehman.

18 But on the 16th, around the 15th and  
19 16th, the only thing I could think, we probably --  
20 there must have been some dialog, have we got a  
21 list of securities to look at. So I would think  
22 that we were sent lists, so if you wanted to  
23 include e-mails sending us lists of securities,  
24 I'm sure that yes, there is communication.

25 But communication in the sense of did

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2 isn't going to be delivered, then we have  
3 definitely wasted time. We are coming up with a  
4 wrong valuation and we will never manage the  
5 correct risk.

6 So I think mostly around the 15th and  
7 16th would have been, well, OK, what are we  
8 looking at this time? And of course during the  
9 course of that week, and that's why -- you know,  
10 my -- the only reason why I am vague as to exactly  
11 what happened the 15th, 16th and 17th, is that it  
12 changed so much so rapidly, that most of what was  
13 happening on the 15th and 16th and almost all of  
14 what we were looking at became redundant by some  
15 time on the 16th, 17th or 18th.

16 MR. STERN: Let me just to clarify, I  
17 take it you are focusing on what Mr. King's  
18 role was and what he was involved in, and  
19 when he uses the term "we," he is referring  
20 to himself and his group as opposed to  
21 Barclays as a whole.

22 THE WITNESS: That's absolutely  
23 correct.

24 MR. HINE: I understand. I  
25 understand.

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Q. But, Mr. King, you folks didn't accept the -- at face value the valuations or marks that Lehman had put on various asset groups, did you?

A. No.

Q. Did you come to some conclusions about the accuracy of Lehman's marks when you were looking at all these asset groups?

A. It is a peculiar way to describe it, did we come up with some assessment of the accuracy of Lehman's marks. In some respects I could say I didn't care about Lehman's marks. I cared about what was a reasonable assessment for the value of the assets and ultimately what was the risk that we were going to have to manage.

If you think about the way a -- as a trader would think, we received phone calls from somebody saying I'd like you to buy -- would you be interested in buying the following at a price or 72. It is fascinating it is 72 they would like to sell it to me at, but mostly I am interested in where we would be interested in buying it, 55.

So can I therefore say ex post facto that, you know, well, I have got some -- I didn't think their offer of 72 was particularly accurate,

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that's an inadvertent output of the fact that we wanted to bid it at 50-something.

Q. I think my question exhibited my inexperience in this field, so I will try again.

Did you -- when you received the information from Lehman, it had some kind of book value ascribed to it by Lehman, correct?

A. Yes.

Q. Did you understand that by the time Barclays and Lehman signed an agreement, that there was going to be some kind of discount off of that book value for the pool of assets that Barclays was going to be acquiring?

A. The signing of the agreement on the Tuesday that you have told me about?

Q. Yes, yes.

A. -- or later --

Q. Yes.

A. I don't know much -- I don't really know what agreement was reached on the 16th. All I know is that there was some assets that we were looking at. I would assume that it wouldn't have been at all a surprise to anybody that a bid, even a reasonable bid or reasonable assessment of a bid

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for small size would be at a discount to book value if that's the valuation that you are referring to. Book value being where it is held in books and records.

Q. Well, I guess I understand your answer, but do you have any recollection of discussions during that period of time -- and again I'm talking the 15th and 16th -- about either discounting or reducing the values that Lehman had ascribed to these pools of assets in order to come to an agreement as to the pool of assets or the marks for the pool of assets that Barclays was going to acquire?

MR. STERN: This is you personally.

A. This is me personally. I have never had any conversations with anybody at Lehman about discounting Lehman's marks. It is definitely the case that in the crudest -- if somebody said to me, Stephen, here is a security, you don't know what it is, but, you know, it is -- it has a price -- the last time it traded it had a price of 50, let's say, mentally, I would say, well, I know it is not -- I certainly wouldn't be bidding 50. I would be bidding half of that or 20 percent of

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that or 80 percent of that or some number.

So it is definitely the case that when we were trying to guess what might be a reasonable value, in a very, very distressed market --

Q. Sure.

A. A very, very distressed market for a very, very substantial number of assets that Barclays would want to be selling, and Barclays didn't -- bear in mind, Barclays didn't want these assets. The assets were -- you wouldn't want to hold on to them. They consume capital. They need to be funded. Funding was expensive, capital was expensive.

The assets were part of, you know, a deal, and therefore, they would -- and, you know, the -- I avoided the word "hedging" when you used hedging because hedging doesn't really -- hedging still means there is a left-over risk. You never really -- especially with assets like this. Hedging is just, well, I have got one thing that I'm short against something I am long. It is not very well hedged, there is still a risk, and that's why banks and hedge funds have had quite a lot of difficulty in the last few months.



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2 So we knew that the objective would be  
3 that we need to dispose of this risk. That was  
4 the objective. So if I was looking at a portfolio  
5 of assets, and you held the assets at 100, let's  
6 say, I'd say I don't know -- and I felt  
7 comfortable that I understand what the assets are,  
8 my bet is I couldn't sell those for more than  
9 80 cents of where you have currently ascribed a  
10 value to them.

11 So yes, when we -- as a desk, the "we"  
12 meaning my group, one of the first things that we  
13 did was say, let's just assume that the stuff we  
14 don't know is at 50 percent of book value. The  
15 stuff that is exchange traded equities is at  
16 95 percent of where it is, because that was a --  
17 the crudest form of guess.

18 Q. Is that the type of analysis you were  
19 doing on the 15th and 16th when you described -- I  
20 think you previously talked about a top-down  
21 approach as opposed to bottom up?

22 A. Yes. Because you do that -- really if  
23 you think about it, you repeatedly do that same  
24 process at an ever-more granular level. Even if  
25 you got down to an individual security, a trader

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2 confident you can be that you have assessed  
3 everything correctly, because there is so much  
4 uncertainty.

5 Q. I think I understand that.

6 So during this early stage now, the  
7 15th and 16th, is it correct to say you're looking  
8 at particular asset classes or groups of assets by  
9 type and performing this type of analysis on them?

10 A. Yes, yes.

11 Q. And so certain groups of assets, you  
12 would be willing to pay a higher percent than  
13 other groups, right, or --

14 A. Yeah. Because to reflect the idea  
15 that the uncertainty about the price or the cash  
16 flows was more or less clear.

17 Q. So were there particular assets or  
18 groups of assets within the Lehman portfolio that  
19 was supposed to be sold to Barclays that warranted  
20 much deeper discounts than others?

21 A. Yes.

22 Q. And which were the most discounted --  
23 or which groups would require the most discount  
24 from your perspective?

25 A. The assets that are the typical assets

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2 would say I've projected -- the thing about some  
3 of these securities and assets is, unlike -- not  
4 all of them but some of them, and certainly the  
5 ones that we would have been looking at at this  
6 time, they are not -- even though many of them are  
7 called fixed income or debt instruments, the  
8 amount of cash that they would be expected to  
9 ultimately pay is actually uncertain, either  
10 because there is a lot of risk associated with the  
11 borrower or there is a prepayment risk or there is  
12 something that makes the cash flow uncertain.

13 So the way a trader would look at it  
14 is to say, I'll make a -- I'll form a view of how  
15 much cash that I would want -- that I expect to  
16 receive on this security, and then I would want to  
17 discount the amount of cash back to some price  
18 that I felt that I was earning an appropriate  
19 yield on. And then when a trader was then  
20 subsequently bidding, they then may provide --  
21 say, actually I'll bid 80 percent of that.

22 So whether it is at the portfolio  
23 level, when we are looking at a whole balance  
24 sheet, or an individual CUSIP, in many respects  
25 the process is the same. It is about how

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2 that my group manages, which is things like  
3 mortgage-backed securities, deeply distressed  
4 credit securities, things for which there is a  
5 very, very limited market and poor visibility on  
6 the expected cash flows.

7 Q. And what kind of discounts would those  
8 groups of assets get during this week?

9 A. To what?

10 Q. I don't know, did you -- again,  
11 talking about the 15th and 16th, did you say --  
12 again, I might be showing my ignorance here --  
13 here is a pool of mortgage-backed security, a lot  
14 of uncertainty here, let's mark their -- let's  
15 discount their marks down by, say, 50 percent?

16 A. Right.

17 Q. You did.

18 A. Yes.

19 Q. OK. And then other, presumably other  
20 categories more secure, more visible -- again, I  
21 might be displaying my ignorance, but perhaps  
22 government securities might warrant a much smaller  
23 discount in the mark?

24 A. Precisely.

25 Q. Is that right?



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A. Precisely.

(Exhibit 388-B, document Bates stamped BCI-EX-S 74256 through 257 marked for identification, as of this date.)

Q. Mr. King, I am handing you a copy of a document marked as 388-B, which is a two-page document with Bates numbers BCI-EX-S 00074256 through 257.

After you have had a minute to look at it, let me know, and I have a question or two about it.

A. OK.

Q. Have you had a chance to look at the document?

A. Yeah.

Q. Have you ever seen this document before?

A. Yes.

Q. When?

A. I remember -- this actually is, I think this is my handwriting on it, and I also saw it yesterday.

Q. When you say "my handwriting on it," you are referring to the second page of the

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document?

A. Yes, yes. Sorry, I thought you were suggesting that I look at both pages.

Q. Yes, yes, I was.

And is it fair to assume that this document was sent to you on the 17th by Mr. Yang?

A. Well, I would have seen this document before the 17th. He is sending it to James Walker. He just happens to be copying me.

Q. Let me distinguish, when you say "this document," the covering e-mail is on the 17th, but the second page, you have seen that before the 17th?

A. Yes.

Q. Can you tell me when you first saw that, the second page?

A. I saw -- I think I saw a hard copy of this at some point -- was this -- yeah. This is an e-mail and this is a hard copy, so I don't quite know how -- whether Jasen had scanned it or how the two became connected, but we had seen -- can I ask that? Is that --

Q. Well, this is how it was produced. It doesn't really matter about the -- where Mr. Yang

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got it, so I'm not going to ask you about that. I just want to focus on the second page of this document.

A. I'd seen this in hard copy, which is why I have scribbled on it at some point after the -- after the 12th. It was produced on the 12th.

Q. This was produced by Lehman to Barclays on the 12th?

A. That's what it says on the top left-hand corner of the second page, Lehman Brothers balance sheet by GAAP asset type 9/12. So I couldn't have seen it before the 12th, but I must have seen it at some point thereafter, but I'm not exactly sure when.

Q. You believe you saw it over that weekend at some point?

A. I had seen it during the weekend. I might have seen it during the weekend, but that was in the old -- that was in the first iteration of the potential acquisition.

So I don't know when I saw it. All I know is I definitely saw it before he sent it to James Walker.

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Q. I guess that was my question. Was this part of your analysis or discussion over the weekend for the first iteration, or did you --

A. I don't remember.

Q. Or did you use it in connection with the second iteration on, say, the 15th and 16th?

A. I can confirm the latter part. I don't remember the former. We might have seen it in relation to the first part, but then it is only a subset. I don't really know why -- in the first iteration of the transaction, where it was buying Lehman, we never really had thought about Lehman as being multiple entities. So looking at LBI specifically prior to Sunday would have been something I wouldn't have focused on.

So I don't think I looked at it at the weekend. I would think I looked at it on the Monday or Tuesday when we were told here is the next iteration of the transaction.

Q. OK, OK. And you are referring to the Lehman Brothers, Inc. at the top of this document?

A. Yes. This is Lehman Brothers, Inc., as opposed to Lehman Brothers. But up to the Sunday, we were thinking Lehman Brothers. So the

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2 first thing I would have asked if somebody sent me  
3 this is, to my point about population, am I  
4 looking at everything, because otherwise this is  
5 redundant.

6 Whereas on the Monday, if someone said  
7 we are now looking at LBI, I can say is it correct  
8 that this is the population of what we are  
9 supposed to look at, and someone could say yes,  
10 and that would make sense. Now we have got  
11 something to work on.

12 So I would think I saw this on the --  
13 and also, by the way, these things, even though  
14 they say 9/12, typically it would take 24 to 48  
15 hours at least for somebody to produce this.

16 Q. OK.

17 A. So I very much doubt this -- although  
18 it is of the 12th, the 12th is close of business  
19 on the Friday, which means it almost certainly  
20 didn't exist until something like the Sunday, and  
21 I would think it was shown to us on the Monday or  
22 Tuesday.

23 Q. OK, fair enough.

24 Do you recall what you were -- I see a  
25 lot of handwriting and a lot of numbers. Do these

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2 e-mail explains that we have started to get files  
3 that should be all of this, but they don't tie  
4 out.

5 He actually points out, you know,  
6 corporate obligations, corporate stocks do not tie  
7 out to the summary. So we have been sent files  
8 that purport to be the same but that don't tie  
9 out.

10 Q. So tie out in your understanding means  
11 he is trying to compare the files of individual  
12 securities with the line item in the -- on this  
13 balance sheet and see that they add up to that  
14 total?

15 A. Exactly right. So he would have had  
16 something that says total corporate obligations  
17 and spot total, let's say. If he would have been  
18 sent a file that also purports to be corporate  
19 obligations and let's say included then the line  
20 items, a notional or a price, so he could  
21 calculate a mark, add the marks up, he ought to  
22 get back to that number, and his e-mail indicates  
23 that they don't.

24 Q. His e-mail is trying to, as you said,  
25 get the proper population of the securities in

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2 refresh your recollection about what you were  
3 analyzing?

4 A. No. These are sort of typical  
5 scribble from me. The e-mail is -- the e-mail  
6 covering is quite elucidating because it  
7 highlights -- the fact that it is a physical --  
8 one of the problems we had at that time was this  
9 is a physical. There also was -- I remember that  
10 there was -- and I don't have this, but there was  
11 a paper copy again of securities that -- these  
12 numbers are produced by Lehman's systems. So  
13 there would have been line items of all the  
14 individual securities that fed up into these  
15 numbers.

16 What Jasen is highlighting on the  
17 front is that we have obviously by the 17th, this  
18 definitely would have been the case as well,  
19 started to receive files, which would have been  
20 Excel files, I would think, and what he is  
21 starting to explain is, all right, we have started  
22 to try to understand what is the population that  
23 leads to this. If this is what we are buying, is  
24 the assets that are currently on -- the assets  
25 that are currently on LBI's balance sheet, his

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2 each group?

3 A. Yeah. And you see, as you say -- my  
4 sentence is that I have asked Jasen to send this  
5 to James, because I thought I'd seen something  
6 that looked similar to it that might help us to be  
7 able to find out. Because with this, there is  
8 almost -- again there is almost nothing you could  
9 do. You would say -- using the percentage  
10 approach, you would have to just take very heavy  
11 haircuts to these large numbers and say I don't  
12 really know what is behind this.

13 Then on his e-mail he is saying, we  
14 have got some stuff but it doesn't tie out to  
15 those numbers, and furthermore, we don't have  
16 listings for derivatives category. We are able to  
17 tie out the asset listings we were given on  
18 Monday. We were given some asset listings on  
19 Monday, so he is showing on Monday there were some  
20 files.

21 And then the last sentence is pretty  
22 interesting because it highlights the fact that  
23 the problem wasn't a static problem. It was a  
24 dynamic problem. So he has a list of securities,  
25 but he says the government and agencies book is --

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although we understand from Clement Bernard that the government and agencies book is shrinking as trades are unwound.

The problem here was the counterparties to Lehman were terminating their trades. So we all have now realized that although Lehman was sending us populations, minute by minute, counterparties to Lehman were terminating trades. Therefore, this population is changing.

Q. I understand.

A. And this was only supposedly as of the 12th, which is the Friday. So by the 17th, the probability that these securities still were on or available to LBI was low.

Q. OK. Thank you for that.

I would like to step back to before the Wednesday, back to the Monday when you're somehow using this document in connection with your assessment of the Lehman assets. Are these -- if you look on the left-hand column, it has "GAAP asset class." Do you see that?

A. Yes.

Q. And then it has six different asset classes listed. Are these the -- are these asset

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classes that fell within your purview in the principal mortgage trading group as groups of assets that you were asked to look at?

A. Not on -- not at this time.

Q. Not on the 15th or 16th?

A. No. We were -- the assets that we were looking at were the -- it was starting to be the case around the 15th and 16th that I had -- I, we, my group, had two hats that we were wearing.

One was to look specifically to end up as the ultimate risk -- actually that's not true, not to end up as the ultimate risk manager, but to assess the value of specific instruments. Here the line item in here that would say total mortgage or mortgage-backed total, the 6 and a half billion. So that is a category that my group would have expected to -- or be capable of risk managing.

Q. Right.

A. That's one hat.

There is a second hat that we were starting to wear, which was to facilitate in the coordination and aggregation of the opinions of other expert desks within Barclays on the other line items. So, for example, total government and

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agencies securities, governments and agencies are traded by a -- you know, there is a desk at Barclays that trades governments and agencies.

Q. Is that desk outside your principal mortgage trading group?

A. Yes, yes. It is in Eric's world, but it is a trading desk.

Q. Eric who?

A. Eric Bommensath, my boss. It is a trading desk, a customer trading desk, and we would have no -- my desk would have no advantage in providing a practical assessment of whether -- of what the valuation pricing or risk management issues were associated with 39 billion dollars worth of governments and agencies.

But with the hat of coordinating, we were starting around the 15th or 16th to facilitate in coordinating and aggregating that information.

Q. So can I just see if I understand what you said.

Your group, the principal mortgage trading group would have -- were provided the assessment, if you will, as to the total mortgage

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and total -- and mortgage-backed securities line item, but as to the other five line items here you would have acted as facilitator?

A. Correct.

Q. Assembling the assessments of other groups within Barclays?

A. Correct.

Q. After you assembled those, presumably that enters into the negotiations between Lehman and Barclays in some way?

A. Then I would have provided an assessment to somebody as to where the current estimate for the cumulative value in our view of value was for this portfolio and particular categories.

Q. Who did you provide that to?

A. I don't remember. It might have been a variety of people. It could have been to -- it would have been at various times to Patrick or to Mike or to whoever was asking me for it at that moment, James Walker, whoever. Some various people at various times asked for an assessment of value for different purposes, and we would provide it.

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<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 Q. Now, are you talking about people</p> <p>3 within Barclays or are you talking -- in other</p> <p>4 words, here is my -- my confusion here is this:</p> <p>5 Are you engaged in any kind of one-on-one</p> <p>6 conversations between Lehman as to the types of</p> <p>7 discounts we might apply to these different</p> <p>8 groups?</p> <p>9 A. No.</p> <p>10 Q. Or are you just providing it to other</p> <p>11 people within Barclays?</p> <p>12 A. Other people within Barclays.</p> <p>13 Q. Do you recall the conclusions you</p> <p>14 reached on the 15th or 16th about these particular</p> <p>15 asset types as far as the amount of discount that</p> <p>16 would be required?</p> <p>17 A. Not particularly. I remember that</p> <p>18 the -- I remember that the mortgage securities,</p> <p>19 for example, we carried around -- we had just said</p> <p>20 I would -- I don't think -- I would be -- I think</p> <p>21 we used something like 50 percent for the mortgage</p> <p>22 securities, for example.</p> <p>23 Q. OK. OK. Do you recall what you used</p> <p>24 for the other categories, any of the other</p> <p>25 categories?</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 A. No.</p> <p>3 Q. Is it fair to say, as I think we</p> <p>4 previously discussed for the less risky or more, I</p> <p>5 think you used the word visible categories, you</p> <p>6 would use a smaller discount than the 50 percent?</p> <p>7 A. Yes. And that's an interesting thing,</p> <p>8 because I remember actually that one of the</p> <p>9 categories here, total government and agencies, I</p> <p>10 remember thinking -- I think you can sort of see</p> <p>11 in some of the scribble here as well, for example,</p> <p>12 the 3.2, I could see a number 3.2 here, which I</p> <p>13 would guess is half of the 6.5 billion or the half</p> <p>14 that we were saying that -- one of the problems</p> <p>15 with that category in particular was that we</p> <p>16 didn't even know what some of the securities were.</p> <p>17 They were just -- you know, because if you look at</p> <p>18 a CUSIP, a CUSIP doesn't tell you anything. You</p> <p>19 have to get a description to go with a CUSIP.</p> <p>20 Q. When you say "that category," talking</p> <p>21 about mortgage backed?</p> <p>22 A. Mortgage backed. Unfortunately banks</p> <p>23 have a tendency of using mortgage and</p> <p>24 mortgage-backed securities to mean anything that</p> <p>25 isn't obviously something else. So it isn't just</p>
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<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 mortgages. It is CDOs, it is manufactured</p> <p>3 housing, it is franchise loans. It is a lot of</p> <p>4 stuff. Because you notice it doesn't obviously</p> <p>5 fit into any of those other categories, so it is</p> <p>6 stuff.</p> <p>7 Because it is stuff, some of it you</p> <p>8 would have no idea from the CUSIP or even the</p> <p>9 description whether it was a performing or</p> <p>10 nonperforming security, a senior obligation or a</p> <p>11 junior obligation. You would actually have to go</p> <p>12 to Bloomberg, or if in some cases it wasn't listed</p> <p>13 on Bloomberg, go to a trader and say what is this.</p> <p>14 Some of these, for example, were what</p> <p>15 they call whole business securitizations, which</p> <p>16 are secured lendings against assets of corporates.</p> <p>17 And there you would have to understand something</p> <p>18 about the company.</p> <p>19 Q. So in the end, because of all these</p> <p>20 uncertainties, you ascribed a 50 percent discount</p> <p>21 rate to that line item?</p> <p>22 A. If someone said -- yeah. But for a --</p> <p>23 if I was asked for an initial guess, a guess, I</p> <p>24 would say, you know, I can't imagine that -- if</p> <p>25 you turned around and asked somebody for a bid of</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 6 and a half billion dollars -- these securities</p> <p>3 for example, mortgage and mortgage-backed</p> <p>4 securities, they trade in -- they have -- many of</p> <p>5 them have face values, notionals of millions of</p> <p>6 dollars. Single numbers of millions of dollars.</p> <p>7 So you can see that 6 and a half billion dollars</p> <p>8 of assets is thousands of line items.</p> <p>9 Furthermore, many of them will trade</p> <p>10 at a few cents on the dollar, 5, 10, 3, 20. So</p> <p>11 there is a tremendous level of uncertainty and</p> <p>12 inaccuracy about it. And the 6 and a half billion</p> <p>13 dollars of assets, to sell 6 and a half billion</p> <p>14 dollars of assets would take a tremendous amount</p> <p>15 of time. Actually, it did ultimately take the</p> <p>16 better part of a year.</p> <p>17 So therefore, to just guess, I can't</p> <p>18 believe that if they are marked there, that if you</p> <p>19 needed to sell them or you wanted to bid them,</p> <p>20 that you would bid more than 50 cents on the</p> <p>21 dollar, would have been a guess.</p> <p>22 Now, remember, subsequently we did</p> <p>23 some work on it and came up with similar sort of</p> <p>24 numbers on it, which is why I happen to remember</p> <p>25 that one.</p>



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<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 Q. That's the one that is within your</p> <p>3 group?</p> <p>4 A. That's the one within the group.</p> <p>5 Interesting thing, the government and agencies</p> <p>6 securities, 39 billion, I remember on -- at around</p> <p>7 this time on the 15th and 16th, I had a pretty</p> <p>8 rosy view of the liquidity of government</p> <p>9 securities and agencies, mostly because I was</p> <p>10 pretty ignorant of what they were. Of course</p> <p>11 because of the collapse of Lehman in the previous</p> <p>12 two days, there was no liquidity in these either.</p> <p>13 So these agency securities turned out</p> <p>14 to be some of the hardest securities to sell</p> <p>15 subsequently. There was a -- there wasn't</p> <p>16 39 billion dollars of them, but there was a</p> <p>17 significant population of agencies securities that</p> <p>18 were in the Fed repo facility.</p> <p>19 They took nine months to sell at a</p> <p>20 significant discount, much more than I would have</p> <p>21 ever guessed on that day, because I would have</p> <p>22 thought they were liquid. There were no liquid</p> <p>23 markets at this point.</p> <p>24 MR. STERN: Bill, could we take a</p> <p>25 brief break?</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 MR. HINE: Sure, sure.</p> <p>3 (Recess)</p> <p>4 BY MR. HINE:</p> <p>5 Q. Mr. King, I would like to continue</p> <p>6 with the second page of Exhibit 388-B, if you</p> <p>7 will. On the right-hand side of the balance sheet</p> <p>8 it's entitled "Net Short Inventory." Do you see</p> <p>9 that?</p> <p>10 A. Um-hm.</p> <p>11 Q. Was this side of the balance sheet</p> <p>12 something that you worked on in connection with</p> <p>13 these transactions, or is that someone else at</p> <p>14 Barclays?</p> <p>15 A. No. There were -- it was one of the</p> <p>16 things that -- they weren't really separable</p> <p>17 because the longs and shorts obviously were</p> <p>18 supposedly interrelated. And you can see that --</p> <p>19 it kind of highlights as well that something like</p> <p>20 the mortgage or mortgage-backed pool, if you will</p> <p>21 notice, is -- there are very few in the way of</p> <p>22 shorts against that because it is not written --</p> <p>23 it is not a -- something that is hedgeable that</p> <p>24 you would expect to have two directional markets.</p> <p>25 People buy stuff, therefore they are long,</p>
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<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 therefore all of the asset -- there is assets and</p> <p>3 there is no liabilities.</p> <p>4 Whereas something like government and</p> <p>5 agencies is an active two-way market, people</p> <p>6 borrow and sell. You can borrow securities and</p> <p>7 you can sell them, so there would be shorts.</p> <p>8 Likewise, you know, corporate equities and stocks,</p> <p>9 et cetera. Again, nonmoney market instruments and</p> <p>10 CDs, there is no way to short them.</p> <p>11 Q. So is it fair to say with respect to</p> <p>12 the right side of this balance sheet, you</p> <p>13 performed the same function you previously</p> <p>14 described, assembling assessments for the first</p> <p>15 five line items, and supervising your group and</p> <p>16 providing assessments for the last line item?</p> <p>17 A. That's correct. And as you see, there</p> <p>18 is really nothing there. So really it would have</p> <p>19 been that we would have provided the list of longs</p> <p>20 and shorts in files and sent them to the</p> <p>21 respective desks.</p> <p>22 And as Jasen says, of course, in</p> <p>23 reality -- therefore, I can't really comment much</p> <p>24 on those values because there are -- there is</p> <p>25 almost nothing that's relevant to the work that my</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 group was doing for itself for the last line item.</p> <p>3 As Jasen's e-mail on the front says, the shorts</p> <p>4 were evaporating as people closed out trades --</p> <p>5 bad choice of words I suppose. They were</p> <p>6 disappearing as people actually closed out trades</p> <p>7 against Lehman, and within 24 hours of this</p> <p>8 Wednesday, I think they became irrelevant. So</p> <p>9 there is very little work that was done on that</p> <p>10 right-hand side.</p> <p>11 Q. I understand.</p> <p>12 I think you said earlier that you were</p> <p>13 not engaged in one-on-one discussions with Lehman</p> <p>14 about the valuations of these different groups of</p> <p>15 assets?</p> <p>16 A. Correct.</p> <p>17 Q. Was there someone at Barclays who was</p> <p>18 so engaged?</p> <p>19 A. I don't know.</p> <p>20 Q. You don't know. OK.</p> <p>21 Before we leave this sheet, can I ask</p> <p>22 for a translation on some of your handwriting.</p> <p>23 The phrase says 3.8 and there's a text. Do you</p> <p>24 see that?</p> <p>25 A. Yeah.</p>



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2 the 65.115, whether they are even based on the  
3 same date, same populations. But I do remember  
4 that fact about the mortgage and mortgage-backed  
5 part.

6 MR. STERN: And that's independent of  
7 Exhibit 19?

8 A. Yes. You can't derive that from --  
9 you can't see that -- I don't remember that from  
10 seeing Exhibit 19 previously, and I'm not deriving  
11 it from that.

12 I am deriving it from a combination of  
13 memory about discussions around that 6 and a half  
14 billion dollars of mortgage and mortgage-backed  
15 securities that are on the 388 page 2, and the  
16 fact that I can see there is only 2.7 billion on  
17 the mortgage line on Exhibit 19.

18 Q. I understand.

19 A. But I don't really -- I don't know  
20 the -- I haven't seen this before, I haven't seen  
21 Exhibit 19 before. At least I don't remember  
22 seeing it. Therefore, I don't remember. It  
23 wouldn't surprise me that 72 and a half or 70  
24 were -- because, as Jasen's e-mail says, things  
25 changed by that day.

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2 Q. Let's talk about the mortgage-backed  
3 securities for a second. At some point in time it  
4 was agreed that Barclays would only take half of  
5 those securities, correct?

6 A. Yeah.

7 Q. And was it later agreed that they  
8 would take more than that?

9 A. As I say, as I pointed out earlier on,  
10 one of the difficulties here is that all of what  
11 we are discussing, as far as I know, as far as we  
12 were concerned, became irrelevant within hours or  
13 days of the 16th. So the entire discussion about  
14 this by the 17th we had put out of our minds. Or  
15 the 18th.

16 Q. "This" meaning the valuation exercise  
17 you were talking about earlier?

18 A. Yes. Because -- and that's very  
19 challenging -- and we had to prioritize, because  
20 in many respects around this time we were working  
21 literally 24 hours a day. And so the only way to  
22 manage this was to say that's now redundant, I  
23 don't want to discuss it, I don't care about it,  
24 we need to focus on what we need to deliver,  
25 because someone has asked us something within an

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2 hour and a half. So now we are going to move to  
3 that.

4 So at some point -- so there are --  
5 unfortunately you are asking me about things that  
6 within a day or so were irrelevant to us.

7 Q. "Us" meaning --

8 A. "Us" meaning my group.

9 Q. OK. Well, tell me then why this all  
10 became relevant. I assume you are talking about  
11 in the Wednesday-Thursday time frame?

12 A. Yeah, at the point that we started to  
13 be asked to focus on the securities that were  
14 collateralizing the Fed repo facility.

15 Q. And what were you told in that regard?

16 A. That here is a population of  
17 securities that is collateralizing a loan that was  
18 provided to LBI by the Fed, and we were being --  
19 we, Barclays was being asked to step into the  
20 position of the Fed. I don't know -- I wasn't  
21 part of the discussions as to why that would be  
22 the case or whether it -- or how it had come about  
23 or whether we would do it.

24 My group was then asked once again to  
25 provide an assessment of the probable value or --

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2 not just even the value actually. What was in the  
3 Fed facility.

4 Q. And who told you -- who told you all  
5 this? Who gave you these instructions?

6 A. The instructions to start to do that  
7 work?

8 Q. Yeah.

9 A. I think, I think it was Mike at the  
10 time asked us to look at it.

11 Q. Mike who?

12 A. Keegan.

13 Q. And did you -- you understand that  
14 there was a repo transaction entered into on  
15 September 18 involving Barclays and Lehman,  
16 correct?

17 A. Yes.

18 Q. That's the Thursday?

19 A. Yes.

20 Q. And so was this assessment you were  
21 asked to do prior to that repo transaction or  
22 was -- were you assessing the securities that had  
23 been posted into that repo transaction?

24 A. Both.

25 Q. So am I correct -- I assume the

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2 securities that were -- supported the Fed repo  
3 earlier in the week were somehow supposed to make  
4 their way into the September 18 repo involving  
5 Barclays and Lehman, correct?  
6 A. Yes.  
7 Q. So you were asked to assess both the  
8 Fed pool of securities and then what ultimately  
9 made it into the repo?  
10 A. That's correct, yes.  
11 Q. And did you come to any conclusions  
12 after that assessment?  
13 A. Yes, the same -- we did the same  
14 process that we had done on each of the previous  
15 iterations. We were able to reuse some of the  
16 information because there was an overlap between  
17 the list of securities that were in the Fed  
18 facility, ostensibly, the Fed facility and also on  
19 the balance sheet of LBI.  
20 We had -- I thought it was on the  
21 Wednesday, we were -- I thought it was on the  
22 Wednesday, not the Thursday, we were first asked  
23 to look at it, which is why I say about the  
24 Wednesday we started to put our pens down on what  
25 we were doing previously, and I remember that we

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2 this week, Lehman had -- Lehman Holdings had  
3 become bankrupt on the 13th. So almost anything  
4 that we were saying about valuations was becoming  
5 redundant each minute because markets were moving  
6 so much.  
7 MR. STERN: You said the 13th. Did  
8 you mean the 15th?  
9 A. I am sorry, the 15th. I think -- the  
10 deal stopped happening on the 14th. Right. So  
11 that week that we are talking about, markets were  
12 moving tremendously because there was disarray  
13 because of the bankruptcy.  
14 Q. There were other events taking place  
15 at the time as well, correct?  
16 A. Yes. Also Merrill, so other things  
17 were going on that meant that, you know, literally  
18 if you had a portfolio of equities or a portfolio  
19 of Treasuries or portfolio of hedges or portfolio  
20 of mortgages, I would say during that week, there  
21 was no -- I mean the exercise to some extent was  
22 academic because we are putting a price on  
23 something for which there was no bid on any of it.  
24 No bid.  
25 Q. Well, I think you said previously you

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2 had literally something like about an hour or hour  
3 and a half when we were first asked to look at it  
4 to -- and the population was 49 or so billion  
5 dollars of assets, and the question was, Stephen,  
6 what do you think these are worth?  
7 Q. That was a population in the Fed repo  
8 or September 18 repo?  
9 A. In the Fed -- sorry, is there a  
10 difference between --  
11 MR. STERN: I think he is asking if  
12 you were looking at the Fed portfolio.  
13 A. Well, we thought -- yes, at this point  
14 we were on the Wednesday or Thursday prior to the  
15 funding the night of the 18th, so there was a list  
16 of -- another list that was sent to us. I can't  
17 remember where the list came from, whether it was  
18 a list from the Fed to operations to us. I don't  
19 remember the information flow. But there was a  
20 list of securities. We were able to put that list  
21 of securities, you know, in a spreadsheet, compare  
22 it to various -- do various look-ups to see  
23 whether we could find whether we had ever put a  
24 price on anything that was in the Fed facility.  
25 Recognizing that during the course of

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2 were asked -- you mentioned a close to 50 billion  
3 dollar number.  
4 A. Yeah.  
5 Q. I still don't know that you answered.  
6 Is that the Fed pool or is that the collateral  
7 that was ultimately posted to the September 18  
8 repo?  
9 A. There I am describing what we were  
10 doing prior to the settlement, which was to  
11 provide -- the question that had been asked to us  
12 is, there is a Fed facility, I seem to remember it  
13 was 45 billion dollars, and it is backed by  
14 securities which have a value -- which I think  
15 subsequently or around that time we found was not  
16 of course -- it is neither a Barclays assessment  
17 of value or Lehman assessment of value, it is a JP  
18 as custodian for the securities assessment of  
19 value. Not a trader's value, so not a mark, just  
20 a -- you know, a price, a matrix price or wherever  
21 they got their prices from, assessment of how much  
22 collateral was supposedly supporting the Fed  
23 facility, and the Fed facility was sized by  
24 reference to haircuts to that assumed value.  
25 So we were then asked to say, well, do

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2 we think that if you had to liquidate this  
3 portfolio, that you could recover the amount of  
4 the loan that was being made.

5 Q. And this is Wednesday night you're  
6 asked this?

7 A. This was I think Wednesday. I  
8 remember it being in the afternoon. And I would  
9 think it was --

10 MR. STERN: And Wednesday was the  
11 17th?

12 A. I feel -- for some reason in my head I  
13 am carrying it around as a Thursday, but I think I  
14 have lost a day in there somewhere because I don't  
15 think I had a night. So --

16 MR. STERN: Just to help, I mean I  
17 don't think there is any dispute about this,  
18 the Fed replacement transaction was executed  
19 on the 18th, into the evening of the 18th,  
20 which is a Thursday. So if that helps you  
21 put things in perspective.

22 A. Yes. In my mind, the time between  
23 when we first were asked to look -- first became  
24 aware of the Fed facility transaction and the  
25 funding of it, was much shorter than a day and a

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2 half. So that may just have been because we  
3 didn't have a night.

4 Q. I appreciate that, for all of us who  
5 have missed nights as well.

6 So is this -- when you said you had  
7 about an hour and a half or two --

8 A. We had an hour and a half. There was  
9 a phone call to say we are being asked to take the  
10 Fed out of this. We didn't know the reason why or  
11 reason for the transaction or whether it was even  
12 necessarily related to it.

13 MR. STERN: "We" being you?

14 A. "We" being Barclays at that point.  
15 That Barclays was being asked to take the Fed out  
16 of its facility, out of this loan, and the  
17 question to us as my group was, what do you think  
18 about this value of securities?

19 Q. And what did --

20 A. And I found that an extraordinary  
21 situation, because we had just had the bankruptcy  
22 of Lehman and we were being asked whether or not  
23 we thought a portfolio of securities, which we  
24 barely knew, because we had only really  
25 encountered them a handful of days before, it was

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2 actually worth 45 billion dollars, and therefore,  
3 should we permit Barclays to lend 45 billion  
4 dollars against a portfolio of securities, and in  
5 any normal circumstances I would never make that  
6 statement or assertion.

7 Q. When you say 45, that's the amount of  
8 the Fed facility?

9 A. That's the amount I remember being the  
10 Fed facility.

11 Q. Secured by -- 45 was the value of the  
12 pool in the Fed, to your recollection, or was that  
13 the amount that the Fed --

14 A. That was the loan amount.

15 Q. And the value or purported value in  
16 the pool was about 5 billion more than that?

17 A. Well, you are using -- you are saying  
18 "value" as if that was value.

19 Q. OK.

20 A. The numbers that were the JP Morgan  
21 marks I think at some date, and I don't remember  
22 which date it was, they may have even been from  
23 the Monday or Tuesday or Wednesday, I don't  
24 remember how current they were. Markets were that  
25 volatile, but that they -- those numbers added up

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2 to -- I remember it being anything from 48 and a  
3 half to 49, to 49.7. There was some -- if you add  
4 up those numbers, it would appear that if it were  
5 possible, if it were possible to sell into the  
6 open market at those JP Morgan marks, then you  
7 would get 49 point or 48 point whatever it is for  
8 the portfolio.

9 Of course that's not a -- that's not a  
10 value.

11 Q. OK. But -- I understand that. I  
12 didn't mean to misuse that word.

13 So what did you conclude as to the --  
14 what did you respond to the people who had asked  
15 you to make this assessment?

16 A. We thought it was possible that in a  
17 controlled way, we might be able to recover enough  
18 to cover the loan.

19 Q. Meaning the 45 number?

20 A. Meaning the 45.

21 Q. Now ultimately, that pool of  
22 collateral or a pool of collateral with some  
23 overlap to that gets rolled in -- gets used in  
24 connection with the September 18 repo, correct?

25 A. Yeah.

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<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 Q. And were you asked to do anything in</p> <p>3 connection with that pool of collateral?</p> <p>4 A. Yes. So now -- so that exercise of</p> <p>5 assessing the value of, liquidatable value of the</p> <p>6 securities that were supporting the facility --</p> <p>7 the Fed facility was needed to be refined. So we</p> <p>8 just carried on.</p> <p>9 Even though we had given that initial</p> <p>10 assessment, the reason why I think it fills a very</p> <p>11 compressed amount of time, we just kept refining</p> <p>12 and refining and refining our views as we analyzed</p> <p>13 the portfolio.</p> <p>14 Q. Right.</p> <p>15 A. As we went into the Thursday -- sorry,</p> <p>16 Thursday night into the Friday, there was</p> <p>17 another -- there is another very difficult piece</p> <p>18 that was in the middle of that, which is</p> <p>19 operationally how do you settle this transaction</p> <p>20 and then how do you risk manage it once the trade</p> <p>21 has come in.</p> <p>22 Q. Can you specify "this transaction"?</p> <p>23 A. The Fed transaction.</p> <p>24 The peculiarity of this, and we didn't</p> <p>25 really understand this at the beginning, but it</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 became clear, is, of course, the normal</p> <p>3 circumstances, a repo transaction shouldn't mean</p> <p>4 that the lender on the loan is long the underlying</p> <p>5 risk of the securities collateralizing the loan.</p> <p>6 They have a secured lending to a borrower that's</p> <p>7 collateralized.</p> <p>8 Here, of course, we knew that we were</p> <p>9 lending to a borrower that was expected to be</p> <p>10 bankrupt within a short period of time, and whose</p> <p>11 parent was bankrupt. Therefore, although it was a</p> <p>12 loan to a counterparty, at some point we were</p> <p>13 going to be long the underlying assets.</p> <p>14 And if we were long the underlying</p> <p>15 assets, we therefore needed to risk manage them.</p> <p>16 Because just because we had assessed that as of</p> <p>17 the Thursday they were worth some amount,</p> <p>18 hopefully more than 45 billion dollars, by the</p> <p>19 Monday, they might have been worth 35 billion</p> <p>20 dollars.</p> <p>21 Q. Right.</p> <p>22 A. So we better do something about that.</p> <p>23 So the focus started to move from how do we</p> <p>24 manage, how do we even see and book -- how do we</p> <p>25 book securities that are not just going to be</p>
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<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 collateral for a repo but are effectively going to</p> <p>3 need to be shadow booked into risk systems so that</p> <p>4 we can generate appropriate risk metrics so that</p> <p>5 we can risk manage them. So we -- our process</p> <p>6 started to change to that.</p> <p>7 Q. And this started even before you</p> <p>8 booked the September 18 --</p> <p>9 A. Yes, yes.</p> <p>10 Q. -- repo?</p> <p>11 A. Yes. Because we had to say how are we</p> <p>12 going to manage this transaction? How are we</p> <p>13 going to manage this risk once Barclays has</p> <p>14 lent -- once Barclays has lent -- in Barclays'</p> <p>15 book, it is going to have -- the repo desk seems</p> <p>16 to have lent 45 billion dollars to a counterparty</p> <p>17 that is going to default, and that is</p> <p>18 collateralized with a number of securities.</p> <p>19 And if it followed its normal process,</p> <p>20 it would be marking those securities, asking</p> <p>21 desks, asking price services to -- it wouldn't</p> <p>22 actually be assuming that it was going to get long</p> <p>23 the collateral and have to liquidate it.</p> <p>24 But here we knew that was going to be</p> <p>25 the case, and it is mostly the case in other</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 distressed -- it is frequently the case, and we</p> <p>3 have obviously seen this because of what happened</p> <p>4 with Bear and Bear's hedge funds that had</p> <p>5 defaulted on repo-secured lending, that the moment</p> <p>6 the repo -- the borrower defaults under the repo,</p> <p>7 you seek to liquidate the collateral, and you</p> <p>8 invariably don't recover enough to cover the loan.</p> <p>9 You hope you are going to, but markets are</p> <p>10 distressed at that moment.</p> <p>11 Well, this was the mother of all</p> <p>12 distress. We are in the middle of a bank, a major</p> <p>13 bank defaulting that many people had thought</p> <p>14 wouldn't have been left to default, but had</p> <p>15 defaulted, and we were about to undertake a</p> <p>16 45 billion dollar lending in which we would be</p> <p>17 long this risk with very limited ways of risk</p> <p>18 managing it.</p> <p>19 Q. So what did you do to risk manage it?</p> <p>20 A. Well, so Thursday we had to assess how</p> <p>21 are we going to record in our books securities,</p> <p>22 when we haven't actually booked the securities, we</p> <p>23 booked a repo facility. So we had to construct</p> <p>24 shadow books that were going to represent the risk</p> <p>25 of the securities that were in the repo facility,</p>



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and then we sought to insure that -- our plan was on the Thursday, each of the desks had a list of the securities that they were expecting to receive, and we had informed them that of course repo is -- this was overnight repo. We weren't but -- a week earlier, by the way, we were not experts in repo. So some of what I am able to talk about now about that repo facility, I actually only learned afterwards.

But this was overnight repo, which meant that strictly speaking the borrower could switch the collateral within the repo facility each night. So we had advised the respective desks, thinking about, you know, in a similar way we categorized the assets that were in the repo facility in a similar way to the way they are categorized on 388-B, and we passed those out to the relevant desks and said tomorrow, you are going to be -- we need you to help us manage this exposure.

And we sent lists to each of the desks. Of course -- but we told them they may marginally change overnight, and until we are certainly long the risk, we can't hedge. We

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couldn't hedge prior because of course if for some reason the transaction hadn't settled, we would be short the market, so there was no way to hedge until we knew that we actually were long the risk.

Q. OK then. There was a lot there, so let me ask a couple of questions.

When you say we were certain we were long the risk, that would be when there was a default?

A. No. Once the securities had settled into Barclays.

Q. Oh.

A. Which would have been the Thursday night, Friday morning.

MR. STERN: You might just explain what you mean when you talk about long the risk and so on.

A. On Thursday, there was -- we knew that there was a Fed facility. Barclays had not lent any money to Lehman. The Fed had lent money to Lehman and collateralized that lending with securities.

Q. Right.

A. That night, Barclays would effectively

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replace the Fed, thereby knowing for certain that it had a secured loan out to Lehman, LBI, where LBI was expected to default.

So it is not until for certain that Barclays has funded that loan that it could say that it definitely is long the risk of the underlying securities.

Q. OK. So if --

A. So for example -- maybe it is easiest by example. If we took a single security on the Thursday, in normal trading, in a normal trading environment, I might be negotiating with a counterparty to buy something and I might be agreeing the price and we might be trading, but -- and I might know that the moment that I want to -- moment that I know I am going to be long the security, I will need to hedge, and I have worked out how I am going to hedge, but until the trader tells me done, not just at some point while we are discussing the price, if I decide to hedge before he says done and then he says, you know what, change my mind, now I have put a hedge on against nothing and I have got to take the hedge off.

So until we know that this repo

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transaction -- this replacement repo transaction has settled, it would be -- it was a trading decision whether or not we should hedge before it settles or after it settles. And we elected to start hedging after it settled.

Q. So when you say settles, that's on Thursday, the 18th?

A. Thursday night into Friday morning.

Q. So that -- OK, I think I understand that.

But aren't you -- I guess I didn't understand the shadow book concept. I thought you weren't long the security until LBI defaults on the Friday.

A. Formally -- exactly right. Until the Friday when there is the default of LBI, then the systems would record a secured lending facility. As I say, some of this, you know, back filling the knowledge because we learned how it really would happen after the fact.

Q. Sure.

A. But that there would be a loan and the repo desk would say, I have got a loan out to LBI and it is collateralized by the following



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2 securities, but it isn't equipped to hedge or  
3 manage those underlying securities because it is  
4 not expecting to ever need to. It thinks it has  
5 got an overcollateralized loan.

6 Q. Right.

7 A. Where it hopes -- where a repo desk  
8 risk management ought to be, I've lent you money,  
9 I have got some additional margin over and above  
10 the amount of money that you have lent, that I  
11 have lent you, and if you default, I am going to  
12 sell it all as quickly as possible. I am not  
13 going to reflect on it and think about whether I  
14 would like to -- those are trading decisions for  
15 someone else. I am going to sell it.

16 And hence, when you try to sell  
17 something in that way, you would invariably,  
18 regardless of whether the last trade observed in  
19 the market was 95, if you phone up somebody and  
20 say I need a bid, you might get a 85, and that's  
21 why they need the margin. But that would be their  
22 normal repo risk management decision.

23 Here we were going into this lending  
24 with the benefit of knowledge that within 24 hours  
25 to 48 hours, it would be the case that this

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2 borrower would default, so that there was no value  
3 to the counterparty, and furthermore, we were  
4 therefore going to be long a humongous number of  
5 securities that we would have no ability to sell.

6 Q. So for that reason you start risk  
7 managing those securities the minute the repo  
8 settles?

9 A. First we say -- many of these  
10 securities have -- so the -- maybe again it is  
11 worth just touching on this for a second.

12 When I talk about risk, what I mean is  
13 that what is the expected change in value of a  
14 security with respect to a change in something  
15 else. So many of the securities have interest  
16 rate sensitivity.

17 Q. Right.

18 A. How much would the value of these  
19 bonds change if the interest rates went up.

20 Q. OK.

21 A. We would also come up with some crude  
22 estimates for, say, the equities portfolio, which  
23 would be how much of the S&P 500 does this equity  
24 portfolio look like. For the RMBS securities we  
25 might say how much of a particular mortgage-backed

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2 index does this portfolio look like.

3 Because we can't know -- we know there  
4 is no way we can sell. If we go out and start  
5 selling at 8 a.m. on the Friday morning, five days  
6 after the bankruptcy of Lehman, we would  
7 recover -- I don't know what we would recover.

8 And we already knew that where we had  
9 seen some of the bids in the market during that  
10 week where other people have been selling -- bear  
11 in mind, the market was flooded with collateral  
12 from the bankrupt Lehman Brothers Holding and  
13 LBIE, so that people were closing out other repo  
14 facilities. So the market was full of Barclays --  
15 of Lehman's securities that were already being  
16 sold. So -- and we were about to get long another  
17 45 billion dollars of them.

18 So there would be no way for us to  
19 manage that. The only way we could do it was  
20 bring the risk on to our systems, assess how  
21 volatile it was going to be and what parts of that  
22 volatility we would have to hedge with instruments  
23 in more liquid markets. For example, S&P. For  
24 example, interest rate derivatives.

25 And that's what we started to do on

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2 the Thursday in anticipation, what systems are we  
3 going to need to help manage that and what are we  
4 going to do on the Friday. Of course, that was  
5 complicated, further complicated by the fact on  
6 the Friday morning we woke up to discover we don't  
7 own the same portfolio we thought we were going to  
8 own a day earlier.

9 Q. OK. Let me put that issue aside for a  
10 minute here. I think I followed you. It is an  
11 area that I am not familiar with, so I apologize.

12 So on Thursday, you are risk managing  
13 or hedging the volatility that you foresee in that  
14 pool of securities as a result of all this market  
15 activity that you have seen? The plan was to  
16 hedge the portion you needed to hedge and then  
17 sell the securities later?

18 A. Yeah. So I think the answer to your  
19 question is actually no, we were not hedging on  
20 the Thursday. We were starting to work out  
21 that -- the process up to the decision of will  
22 Barclays lend against this pool of assets was one  
23 that would incorporate both an assessment of  
24 Barclays' assessment, not JP's assessment or  
25 Lehman's assessment or anybody else, but Barclays'

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traders' assessment of what was the realizable value of the securities and the amount of -- it would need to have some amount of cushion over and above the amount that it would lend, because the moment that it started to sell, Barclays itself would drive the market down.

Q. Right, right.

A. So we needed to do two things on Wednesday and Thursday. One, an assessment of an estimate of what we thought was a reasonable liquidation value for the portfolio, and then, two, what was a reasonable guess at the risks that we were taking by being long that portfolio. That's what we were doing Thursday.

On Friday then --

MR. STERN: "That portfolio" is the Fed portfolio?

A. For the portfolio we thought we were going to take delivery of, or best guess of the portfolio we thought we were going to take delivery of on the Friday.

But it wasn't until -- and then we made a decision not to hedge on the Thursday. And then on the Friday, once we knew the transaction

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had been consummated, so we knew that we were actually long --

Q. That's Thursday night, Friday morning?

A. So some point Thursday night, somebody would have phoned me and said, Stephen, we are long. So then we knew we had eliminated one risk, which was the execution risk.

Q. Right, right.

A. Because we couldn't -- the reason for not hedging was we could never manage -- never hedge the execution risk.

Q. Right.

A. But on Friday we now know we are long. Let's say that was at 2 o'clock in the morning or something. No markets are open, so there is no way to start selling or to manage -- actually we couldn't start selling because actually it is just a repo facility, it is not that we are long the assets, so you couldn't sell on the Friday.

So therefore, we would have to think up things we could use to hedge the risk. And that's -- we started that process on Thursday. By Friday we started to realize there are securities that we thought we were going to take delivery of

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that we haven't, and there were securities that we have never seen before.

Q. What happens when you -- is that early in the morning Friday?

A. We started to be aware of that early in the morning Friday.

Q. So take me through what happens. I assume you take that to someone's attention?

A. Yes.

Q. What happens in that regard?

A. They say what -- so what do you want to do, Stephen, and we start the process again, which is OK, we have got a list of securities, do we have a complete population -- bear in mind -- the reality is, this was -- there was a tremendous number of people that were involved in this, because this was a -- you know, it had to be a very sensibly and carefully risk managed process. We couldn't eliminate the uncertainty associated with prices, but we ought to be eliminating the uncertainty associated with how we managed the process.

So a lot of people involved, but the Friday morning therefore we just started to do

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again what we had done the day before, how many of the securities do we know? Do we have a complete population? How do we categorize the securities that we haven't seen before, what are they, and actually less what do we think they are worth at that point, because it doesn't matter. More what matters is what are they and how do we manage them, and that's what we did on the Friday.

Q. Can I ask you a question. I think -- tell me if I am wrong. I understood that there was some kind of glitch in transferring the Fed pool of securities to the repo to the tune of about 7 billion dollars, and that Lehman, to make up that shortfall, took a loan and put it into the repo. Is that your understanding?

MR. STERN: Objection to the form.

A. All I know is -- I reiterate the role that we were playing. The role that we were playing is we are not operations people. We are traders and risk managers. Our job was to assess value and then manage the multitude of risks associated with the acquisition of the assets.

I know by construction that there were differences between what we thought we were going

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to be risk managing on the Thursday and what we were actually risk managing on the Friday, and I know that that is -- that there was 7 billion dollars of supposed value, and I think they were using -- I don't know what marks they were using, but 7 billion dollars that had been substituted for cash, which therefore cash doesn't -- nice thing about cash, you don't have to risk manage it, or at least we didn't think so.

Q. I would assume so.

MR. STERN: Turns out you did.

A. Turns out we did. Cash is supposed to be cash.

And then in addition to that -- so there was a -- there were less secure -- rather than -- and I'm using these numbers just to try to indicate population as opposed to the accuracy of the numbers.

So that we had anticipated that at JP marks, that there was a population that JP assessed as being worth 49.7 of securities, that actually that was 42.7. Therefore -- and there was 7 billion of cash.

In addition, though, within the

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securities, they were not the same population. So it wasn't even that it was just a subset of the original population, the Thursday population, it was a subset of the original population plus about 10 billion dollars of stuff that we had never seen before.

Q. That's where I was leading with the question. In other words, the difference that you saw between what you expected and what you received is both in the size of the pool as well as the composition of part of the pool?

A. Correct. There was approximately -- again I am using these numbers, using -- by reference to the JP marks, not my assessment of value or what we were ultimately able to sell them for. There was something like 49 -- we thought that there was going to be something like 49, a population that JP would mark at 49.7. There actually was only about 32 billion dollars of that population was delivered.

Then there was 7 billion of cash or cash that -- you know, cash was cash, and then there was 10 billion dollars, and now -- for which we didn't have any equivalent JP valuations, but

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that once they arrived at BoNY, which was our custodian, BoNY assessed as having marks in total of about 10 billion dollars, and that portfolio we had not seen before.

Q. What did you do with respect to that portfolio and the BoNY ones?

A. The exact same as we had done with all the preceding lists of securities. We tried to assess had we got the entire population.

Bear in mind, the reason we do that, there is no point in risk managing something if it isn't what you actually own. So it has to start with do I really own this. We spent a tremendous amount of time focusing on do I have this, is this a population, categorizing the population, because now all we have got is a list of CUSIPs, so you have to get from CUSIPs to a description of the asset by name, by asset type, then to break it out into asset types, and then to assess what we think its risk is and what its value ought to be.

Q. And so that's a process you started with respect to this 10 billion dollars --

A. On that Friday morning.

Q. -- on that Friday. Did you come to a

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conclusion on that Friday or when?

A. I think one thing that's also worth pointing out, the idea of a conclusion suggests finality. We had -- and I don't think we -- the conclusion probably should be the date on which ultimately it was sold, and stuff took a year to sell.

On that Friday, yes, we did start to think that we had a list of all the securities that were delivered. That took time. And we started to estimate our own -- you know, Barclays' trading desk values for them in -- you know, in the environment that we were in, and the risk.

Q. And did you come to any interim assessments on that Friday?

A. Yes, yes.

Q. What did you assess on that Friday?

A. In relation to -- I don't really remember too much on that Friday about the valuations, because we were very focused on the risk.

Q. OK. Would you have the same answer if I said over the weekend?

A. Yeah. I mean over -- no, over the

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<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 weekend, then it started to change. The -- we</p> <p>3 were, you know, reassess -- we -- between there</p> <p>4 and the end of the year, end of the financial</p> <p>5 year, we were constantly reassessing what we</p> <p>6 thought was the value of the securities.</p> <p>7 So you're right, over the weekend we</p> <p>8 started to revert back to what do we think the --</p> <p>9 what number are we going to use as a -- when</p> <p>10 management is asking me, well, Stephen, what did</p> <p>11 we take delivery of, they would like an answer and</p> <p>12 they would like it now, not a better answer in</p> <p>13 three weeks' time. So we had to come up with</p> <p>14 something. But that was a crude response.</p> <p>15 And in some respects it didn't really</p> <p>16 matter to what we were doing, "we" being my desk,</p> <p>17 because what really mattered is, do we have the</p> <p>18 population and what is the risk of it.</p> <p>19 I know that obviously some of the</p> <p>20 valuation work we were doing would then be feeding</p> <p>21 back into the negotiations that other parties were</p> <p>22 having about a deal with Lehman, but it actually</p> <p>23 wasn't very germane to what we ourselves were</p> <p>24 doing.</p> <p>25 Q. I think I understand that.</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 You have mentioned two different --</p> <p>3 this is Friday now. You mentioned two different</p> <p>4 sets. One is 32 billion dollars worth of</p> <p>5 securities which had JP marks on them, and the</p> <p>6 other is this 10 billion dollars of securities</p> <p>7 that you had never seen before which had BoNY</p> <p>8 marks on them.</p> <p>9 A. BoNY marks on it.</p> <p>10 Q. Is this assessment that you are doing</p> <p>11 over that weekend primarily focused on the 10</p> <p>12 billion dollar pool?</p> <p>13 A. No, everything.</p> <p>14 Q. Are you coming to some interim</p> <p>15 conclusions during that weekend about the marks?</p> <p>16 A. Yes.</p> <p>17 Q. And what are you finding out that</p> <p>18 weekend?</p> <p>19 A. I don't really -- the one thing that I</p> <p>20 remember is saying that I felt that the cumulative</p> <p>21 amount of securities and cash that we had received</p> <p>22 in an orderly disposal, in not just a fire sale,</p> <p>23 we couldn't just sell -- we couldn't say let's</p> <p>24 sell these over the weekend and then we are done</p> <p>25 by Monday.</p>
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<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 The -- there was -- the loan was</p> <p>3 adequately collateralized. And that I remember.</p> <p>4 Q. And you told that to your supervisors</p> <p>5 or whoever was asking?</p> <p>6 A. Yes, yeah, yeah. And then on the</p> <p>7 Friday we started to hedge.</p> <p>8 Q. You started to hedge both the 32</p> <p>9 billion pool and the 10 billion?</p> <p>10 A. We didn't differentiate. We really</p> <p>11 didn't start talking too much about what we had</p> <p>12 received. Much of the discussion about what we</p> <p>13 had received versus hadn't received really didn't</p> <p>14 go on until later on.</p> <p>15 We only really cared about what</p> <p>16 would -- you know, the cumulative amount of what</p> <p>17 we had received.</p> <p>18 Q. Later on meaning after the weekend?</p> <p>19 A. Yeah, weeks later.</p> <p>20 Q. So did you have any discussions over</p> <p>21 that weekend with Lehman or did anyone from</p> <p>22 Barclays have discussions with Lehman as to, in</p> <p>23 words or substance, hey, how come we got</p> <p>24 10 billion dollars of securities we weren't</p> <p>25 expecting?</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 A. I know there were discussions, both</p> <p>3 with JP and Lehman. We weren't -- my desk weren't</p> <p>4 part of those discussions.</p> <p>5 Q. All right. Do you have any</p> <p>6 understanding of what happened in those</p> <p>7 discussions?</p> <p>8 A. In relation to what?</p> <p>9 Q. Well, do you have any -- someone from</p> <p>10 Barclays said words to that effect to Lehman,</p> <p>11 right?</p> <p>12 A. Or to JP. I don't know -- the deck</p> <p>13 securities had come from JP. So why -- so -- all</p> <p>14 we cared about, why have we not got the same</p> <p>15 population that the Fed thought it had the night</p> <p>16 before?</p> <p>17 Q. You are comparing what you got on</p> <p>18 Thursday night and Friday to the population that</p> <p>19 you had spreadsheets about what was previously</p> <p>20 comprised of the Fed pool?</p> <p>21 A. Yes.</p> <p>22 Q. And there was a difference in about</p> <p>23 10 billion dollars worth of those securities?</p> <p>24 A. 17 or so billion, because there is</p> <p>25 some missing, 7, and then the 10, and using those</p>



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2 JP or combination of JP and BoNY numbers. But we  
3 weren't ever part of the conversations about what  
4 had happened and why it had happened.

5 Q. OK. Just so I am clear, you had a  
6 pool of some close to 50 billion dollars of marked  
7 securities for the Fed. What you get on Thursday  
8 night or Friday is about 7 billion in cash,  
9 32 billion with -- that had been in that pool, and  
10 about 10 billion of new securities; is that right?  
11 Am I understanding the groups now?

12 MR. STERN: Can I hear the question,  
13 the question back.

14 MR. HINE: Let me try again. It was a  
15 long convoluted question.

16 Q. You previously had a list or some kind  
17 of data that showed about 50 billion dollars worth  
18 of assets in the Fed pool, correct?

19 MR. STERN: Objection to the form.

20 A. Well, the -- we had a population of  
21 securities which we were expecting to take  
22 delivery of which we understood was supporting a  
23 Fed facility.

24 Q. And that -- I'm just trying to -- I am  
25 drawing a Venn diagram in my head. I want to see

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2 how what you expected to be in the Fed facility  
3 compared to what you ultimately received.

4 A. Right.

5 Q. As I understand your testimony, tell  
6 me if I am wrong, it is about 32 billion dollars  
7 of what you ultimately did receive had previously  
8 been in the Fed facility, to your understanding;  
9 is that right?

10 MR. STERN: Objection to the form.

11 A. Unfortunately what we are having to do  
12 is to use -- because we couldn't -- when we are  
13 talking about the population, we can't describe --  
14 between you and I, we can't discuss CUSIPs and we  
15 can't discuss asset types, so we are ending up  
16 using JP Morgan numbers to describe populations.

17 So I'm just being a little bit  
18 cautious about the fact when you say 32 billion,  
19 that 32 billion dollars is just the sum of the JP  
20 Morgan marks at a particular time.

21 Q. Right, right.

22 A. That was probably a different time to  
23 the time of the 49 billion dollars worth of  
24 JP Morgan prices on securities that we thought to  
25 take delivery of. So I am just being particular

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2 about that.

3 Are we saying that they are of a  
4 population that JP Morgan at some point had marked  
5 at 49.7, I seem to remember, did we take delivery  
6 of a subset of that, using your Venn diagram, that  
7 JP Morgan had assessed at about the time of the  
8 settlement as 32 billion dollars, yes.

9 Q. And in addition, you took delivery of  
10 a pool that BoNY had assessed at about 10 billion  
11 dollars of new securities that were not part of  
12 the Fed pool?

13 A. Yes, yeah.

14 MR. STERN: Objection to the form.

15 Can I hear the question again.

16 (Record read)

17 MR. STERN: You can answer that.

18 A. Yeah, I think that's right. I also  
19 don't know -- when I come to think about it, I  
20 don't even know whether the 32 -- I think the 32  
21 that you are referring to probably was -- we had a  
22 list of securities that from a number of days  
23 before we had JP Morgan's -- bear in mind, the  
24 moment that the securities moved from JP as  
25 custodian to BoNY as custodian, they are not

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2 then -- the availability of the marks by the  
3 previous custodian at that moment are not  
4 available.

5 So it may be even that the 32 billion  
6 dollars is actually BoNY as opposed to the  
7 original JP. I think it was the mark -- it was  
8 the sum of the marks that JP had put on the  
9 portfolio the last time JP had provided it.

10 Q. OK.

11 A. Then there was a population of  
12 securities which then BoNY provided, because BoNY  
13 provided custodial marks. We actually used to  
14 call them custodial, although that's a desk  
15 colloquial term. The custodial marks provided by  
16 BoNY on the population we hadn't seen before was  
17 approximately 10 billion dollars.

18 (Exhibit 389-B, document Bates stamped  
19 BCI-EX-S 75200 through 201 marked for  
20 identification, as of this date.)

21 Q. Mr. King, handing you a copy of a  
22 document marked as Exhibit 389-B, which is Bates  
23 stamped BCI-EX-S 00075200 through 201. Please  
24 take a minute, and I will have a few questions  
25 about this.



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<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 that means?</p> <p>3 A. Right. So I'm not sure where this --</p> <p>4 this may have actually -- I think -- there were</p> <p>5 two -- you mentioned that there were -- there</p> <p>6 was -- there is sort of multiple tracks that may</p> <p>7 have been going on simultaneously here. We</p> <p>8 were -- my desk was focused on what assets do we</p> <p>9 have, what do we think we can recover from them,</p> <p>10 in valuation, you know, in liquidation valuation,</p> <p>11 and how do we risk manage them.</p> <p>12 There also was a formal process of how</p> <p>13 do we and how do Barclays and Lehman mark the</p> <p>14 books and records, the securities.</p> <p>15 I don't even know whether this was</p> <p>16 something that was Lehman asking Lehman people to</p> <p>17 mark their securities or Barclays asking Lehman</p> <p>18 people to mark their securities or for what</p> <p>19 purpose it was.</p> <p>20 Bear in mind, traders were supposed to</p> <p>21 still be sitting in their seats of a nonbankrupt</p> <p>22 entity on the Friday marking their books. They</p> <p>23 still had a -- they worked for a broker dealer.</p> <p>24 They have long risk positions. They have an</p> <p>25 obligation to mark every day.</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 Q. Well, Lehman, LBI declared bankruptcy</p> <p>3 on that Friday, right?</p> <p>4 A. Maybe that was it. Was it on the</p> <p>5 Friday?</p> <p>6 MR. STERN: The 19th?</p> <p>7 A. OK. I don't know. Maybe that was on</p> <p>8 the Thursday -- I don't know the timing of this</p> <p>9 particularly, but the -- presumably there was -- I</p> <p>10 could see that they -- the traders had to mark</p> <p>11 certain things.</p> <p>12 I think this, David's involvement here</p> <p>13 is because we would like to have a mark on what we</p> <p>14 have just taken delivery of, because all we have</p> <p>15 got is a list of securities, and what was clear,</p> <p>16 it is not clear from this e-mail, is that some of</p> <p>17 the securities at the BoNY marks were atrociously</p> <p>18 mismarked. So you need a trader.</p> <p>19 Most price testing functions work</p> <p>20 extremely hard. Price testing functions meaning</p> <p>21 groups. We have a price testing group within</p> <p>22 Barclays. There is a price testing group within</p> <p>23 Lehman. BoNY and JP as custodians need to try to</p> <p>24 come up with prices for thousands and thousands</p> <p>25 and thousands of securities every day. So they</p>
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<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 have to do it in some kind of batch way. So they</p> <p>3 come up with heuristics by which they mark things,</p> <p>4 because otherwise how could you do it?</p> <p>5 But that's not the same as where a</p> <p>6 trader on a minute, who sat in his seat, talks to</p> <p>7 other traders and says, I would be willing to</p> <p>8 trade. It is supposed to be a pretty good guess,</p> <p>9 but it is never perfect.</p> <p>10 And in between the bankruptcy of LBH</p> <p>11 and bankruptcy of LBI, it was -- you know, it</p> <p>12 is -- the tracking error of that kind of approach</p> <p>13 is bound to be big. So as soon as we have taken</p> <p>14 delivery, it is great -- at least we have got</p> <p>15 BoNY's assessment of where they thought they would</p> <p>16 be willing to advance against -- bear in mind, the</p> <p>17 other thing about the BoNY and JP marks is that</p> <p>18 the Fed was using -- what the Fed does when it</p> <p>19 takes those marks is -- I can't remember the</p> <p>20 advance rates. I learned them later on.</p> <p>21 But when the Fed lends, if you looked,</p> <p>22 went to the Fed's website and looked at the</p> <p>23 advance rates of the securities, what it does is,</p> <p>24 it says, we will assess a value of security at</p> <p>25 some mark that the custodian has provided us, and</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 then we will advance less than that as the loan.</p> <p>3 So for example, for mortgage-backed</p> <p>4 securities that might only be 50 percent of the</p> <p>5 supposed mark. So they are not as worried, and in</p> <p>6 normal market conditions that's supposed to be</p> <p>7 fine. They are not actually as worried that they</p> <p>8 have got the mark perfect, because they are only</p> <p>9 lending 50 cents on the dollar, or on equities,</p> <p>10 for example, I think they lend 90 cents on the</p> <p>11 dollar. For agencies maybe they lend 80 cents on</p> <p>12 the dollar.</p> <p>13 So they are saying, I think I have got</p> <p>14 this, I know statistically I must have some error</p> <p>15 on it, but I am only lending 80. Whereas the</p> <p>16 trader when he trades, he is trading there, and he</p> <p>17 is exposed to the first dollar of mispricing, not</p> <p>18 the dollar after the haircut. So they have very</p> <p>19 different tolerances for error.</p> <p>20 So this, on that Friday morning what I</p> <p>21 asked David to do, let's see if we can get an</p> <p>22 assessment as quickly as possible of the -- what</p> <p>23 the things we haven't seen before are worth, and</p> <p>24 it may have been, I don't remember, also the</p> <p>25 stuff, what we long today, worth today, not</p>

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2 yesterday, because that also is different.  
3 And what he is highlighting is that  
4 there are -- in the first paragraph he highlights  
5 that of course the Lehman guys hadn't actually got  
6 in their inventory the list of securities that  
7 were part of the repo. Because of the  
8 intercreditor relationships between the various  
9 Lehman Brothers entities, it wasn't necessarily  
10 the case that everything that was in the repo  
11 facility was also on the Lehman balance sheet,  
12 Lehman Brothers, LBI balance sheet.  
13 And in the second paragraph it also  
14 has -- there must have been a separate  
15 conversation going on. There is a typo in there,  
16 actually, but it says, "an orderly liquidation  
17 mark." Notice the use of the term "orderly  
18 liquidation mark," not liquidation today mark.  
19 Because we couldn't -- that would have been  
20 50 cents on -- that would have been who knows, but  
21 20 billion dollars. There just could be no bid.  
22 There was no bid for any of this on this date.  
23 And the second is a typo in there. It  
24 says "at a bin in comp." That should be "a bid in  
25 comp mark." That was presumably supposed to be

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2 which is was there another group that was also  
3 marking securities. Is that right?  
4 MR. STERN: I think what Bill wants to  
5 know is, who was involved in the booking of  
6 the securities and ultimately marking them  
7 on the Barclays side.  
8 A. As a formal matter, it is always the  
9 trader's responsibility to mark a book. As a  
10 practical matter then, there are price testing  
11 groups that are within that product control group,  
12 PCG function, that have a responsibility to assess  
13 whether the traders have marked their books  
14 correctly, and they can ask them to revisit their  
15 marking and remark them.  
16 Q. OK.  
17 A. That's the logic of the trader and the  
18 control function.  
19 Q. OK.  
20 A. So that would have been -- that at  
21 some point -- I don't know whether it was  
22 happening on the Friday. At some point that would  
23 have had to have happened.  
24 In addition, Barclays would have to  
25 construct the balance sheet, an acquisition

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2 more of an assessment of, you know, if you had  
3 to -- if you were willing to buy it today, where  
4 would you buy it.  
5 So they are being asked to provide an  
6 assessment of both. But that wasn't for us.  
7 Q. "It wasn't for us" meaning --  
8 A. It wasn't for my group. That might  
9 have been for Lehman, it might have been for --  
10 Q. So is your group, this whole -- I  
11 understand you to be saying that your group was  
12 focused on getting the population that we had been  
13 provided, at least an accurate assessment of what  
14 we got?  
15 A. Yes, yes.  
16 Q. Was there another group focused on how  
17 to mark them price-wise? Or how to book them into  
18 Lehman's system -- I mean Barclays' system?  
19 A. No. Not -- not that part, but product  
20 control -- and -- I'm trying -- I was trying to  
21 explain what I do know about this e-mail and about  
22 things that happened on the Friday. So hopefully  
23 I have answered that question.  
24 Q. Yeah.  
25 A. This feels like a different question,

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2 balance sheet that represented what it had  
3 ultimately purchased by way of this transaction.  
4 That again would be a finance -- it is finance's  
5 responsibility, not the desk's responsibility, to  
6 produce balance sheets.  
7 Therefore, finance would have to make  
8 a determination of what it thought was the  
9 appropriately price tested valuation for the  
10 securities that were acquired on the acquisition  
11 date.  
12 Q. OK.  
13 A. That didn't really happen. That  
14 happened over a very long period of time. So  
15 hopefully that answers that second question.  
16 Q. It does.  
17 The finance function and the  
18 preparation of the balance sheet I take it is in  
19 the finance department, not in the PMTG  
20 department; is that right?  
21 A. That's right. Under normal  
22 circumstances, if everything worked well, traders  
23 would mark their books. Those marks would be  
24 picked up by systems -- the same for Barclays as  
25 any other bank. Those marks would be picked up in

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2 transaction, as I said, was not in isolation of  
3 the fact that we were acquiring, you know, other  
4 things.

5 So I never really think of them as  
6 separate. I thought of it as being Barclays is  
7 having to put money out of the door against what I  
8 know is a portfolio of assets that have an  
9 estimated value that hopefully is more than the  
10 loan, but that doesn't look like a very good  
11 trade. So therefore, there has to be other stuff  
12 that's going on.

13 But that's not part of our  
14 responsibility.

15 Q. I guess this is what I am driving at.  
16 You told me before that on that Friday, you  
17 received 10 -- assets marked at 10 billion dollars  
18 that you hadn't expected?

19 A. Yes.

20 Q. Is the additional assets that Lehman  
21 provides over that weekend the result of Barclays'  
22 dissatisfaction with the securities it had been  
23 provided under the repo?

24 A. I don't know. Not to -- no, I  
25 think -- no, not to the best of my knowledge. It

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2 was -- no, not to the -- I think it was another  
3 list -- to us, it was another list of securities  
4 that was part of -- I mean, I think by the Friday,  
5 it must be the case that I had seen the draft of  
6 the asset purchase agreement, so I -- you know, I  
7 knew that there was a list of these securities  
8 that were in this repo facility, but there were  
9 lots of other things that were subject to the  
10 purchase agreement as well.

11 So the fact that from time to time  
12 somebody would ask us, by the way, also there are  
13 these other things that look like things, Stephen,  
14 that you would be able to put an estimate of value  
15 on, and ultimately you will end up risk managing,  
16 that would come to me. Then I would respond to  
17 them, and I would assume that this was part of  
18 something that was a -- the repo transaction was  
19 just a subset of a liability and an asset that  
20 makes up the larger transaction.

21 Obviously later on, I saw the  
22 acquisition balance sheets and things, so I could  
23 see that there were those pieces. So none of that  
24 was a surprise to me. But I wasn't part of the  
25 conversations.

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2 Q. OK, very good.

3 MR. STERN: Should we take a quick  
4 lunch break?

5 MR. HINE: Sure. Let's go off the  
6 record.

7 (Recess)  
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2 AFTERNOON SESSION

3 1:14 p.m.

4 BY MR. HINE:

5 Q. Good afternoon, Mr. King. I wanted to  
6 go over a few documents with you based on some of  
7 the things you have already talked about, but I  
8 did want to start off with two topics.

9 First is the -- you have described how  
10 you received a bunch of assets through Lehman  
11 transactions on Friday, and then later on you  
12 received additional assets.

13 Eventually, these assets get booked  
14 into Barclays' system, and is it correct that  
15 Barclays intended to conduct an orderly  
16 liquidation of those assets over time?

17 A. On the -- it wasn't until later that  
18 we concluded that that's what we would do or how  
19 we would do it.

20 Q. Do you know how much later? Do you  
21 have a time frame in mind?

22 A. Days and weeks and -- days and weeks.

23 Q. Is it fair to say probably sometime  
24 before the end of September of '08?

25 A. We had been -- we had already disposed

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<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 of some by the end of September. Prior to the</p> <p>3 19th, it had been -- my expectation and</p> <p>4 understanding was that we would -- there were</p> <p>5 going to be a number of teams that were coming in</p> <p>6 from Lehman that would be integrated with the</p> <p>7 relevant Barclays team.</p> <p>8 There was work that was going on -- it</p> <p>9 was a very fluid environment, very, very fluid</p> <p>10 environment. There was work that was going on in</p> <p>11 the front office trading teams to interview and</p> <p>12 integrate people, and it was our working</p> <p>13 assumption -- this is only really coming into play</p> <p>14 in the middle of that week -- that we would</p> <p>15 facilitate the booking and on boarding of the</p> <p>16 assets, and then we would be pushing them back</p> <p>17 into the relevant trading teams.</p> <p>18 And at various times, the expression,</p> <p>19 you know, well, these are the guys that are going</p> <p>20 to be managing the assets, was used to refer to</p> <p>21 the Lehman people or the Barclays people. They</p> <p>22 would go to a desk.</p> <p>23 As it transpired, as we went through</p> <p>24 the following days and weeks, we started to</p> <p>25 conclude that markets were much, much more broken</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 at a very, very fundamental level than we had</p> <p>3 really anticipated. And "we" being I think -- I'm</p> <p>4 not even talking about my group or Barclays, but</p> <p>5 "we" meaning financial markets and the general</p> <p>6 public at large hadn't quite realized how broken</p> <p>7 it was.</p> <p>8 And we, very close to what was</p> <p>9 happening at Lehman, could see that some things</p> <p>10 are irreparably damaged here, and the ability to</p> <p>11 unwind quickly some of these assets is going to be</p> <p>12 very, very difficult.</p> <p>13 And at that point I suggested, and</p> <p>14 this was then subsequently taken up, that rather</p> <p>15 than just push the assets back into the trading</p> <p>16 desks, even with segregated books in the trading</p> <p>17 desks, that we ought to manage them at a more</p> <p>18 coordinated -- in a more coordinated and central</p> <p>19 way and liquidate them in a more orderly fashion.</p> <p>20 But that really was not -- and you may</p> <p>21 remember I said earlier on that my -- our group,</p> <p>22 my group PMTG changed at some point around the</p> <p>23 time. We actually brought additional resources</p> <p>24 into PMTG to facilitate that and took some</p> <p>25 responsibility for liquidating of the assets over</p>
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<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 and above the assets that we were originally</p> <p>3 managing.</p> <p>4 So there was a bit of a change in</p> <p>5 plan, you know. There wasn't much of a plan, but</p> <p>6 the understanding changed over those -- over about</p> <p>7 ten days or so.</p> <p>8 Q. So the assets that you received from</p> <p>9 Lehman in different tranches never were parceled</p> <p>10 out to the trading desks?</p> <p>11 A. They were parceled out -- some of</p> <p>12 them, they were parceled out so that the trading</p> <p>13 desks could originally review them. We further</p> <p>14 refined that to say certain of the assets will be</p> <p>15 parceled out and managed by the respective trading</p> <p>16 desk and some of them won't be.</p> <p>17 So it is a -- it is not as simple and</p> <p>18 straightforward a division as all assets were</p> <p>19 handed down to the respective trading desks. Some</p> <p>20 of them were. Some of them we sold to the</p> <p>21 respective trading desks so they could go out and</p> <p>22 sell them as quickly as possible.</p> <p>23 Otherwise, PMTG retained the risk</p> <p>24 management responsibility but was facilitated by</p> <p>25 the respective trading desk in the liquidation,</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 and others we just kept and managed within our</p> <p>3 group and brought additional resources in to</p> <p>4 facilitate the management.</p> <p>5 So there was three categories.</p> <p>6 Q. When you say facilitate the</p> <p>7 management, meaning your group liquidated --</p> <p>8 A. Managed and liquidated it.</p> <p>9 Q. So has this orderly liquidation now</p> <p>10 been completed?</p> <p>11 A. No. I think also to suggest --</p> <p>12 "orderly liquidation" to me tends to convey -- it</p> <p>13 is a term that's often used when trying to</p> <p>14 describe how -- what type of valuation you would</p> <p>15 attribute to a particular asset. I don't think</p> <p>16 anyone ever used the term "orderly liquidation" to</p> <p>17 describe particularly what we were doing. It was</p> <p>18 liquidation.</p> <p>19 Q. OK, fair enough. I think I was using</p> <p>20 it because I saw it in one of the documents here.</p> <p>21 But you say sometime in September the</p> <p>22 approach changed. Is the approach still to this</p> <p>23 day to liquidate all the assets that were acquired</p> <p>24 by Lehman or just select types of assets or</p> <p>25 categories?</p>



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<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 A. It was, it was never -- it was never</p> <p>3 described to me that the intention was to retain</p> <p>4 for longer than was necessary or sensible any of</p> <p>5 the assets.</p> <p>6 Q. So is there a way to assess now,</p> <p>7 several months later, whether Barclays made money</p> <p>8 on this pool of assets it received from Lehman?</p> <p>9 A. We made -- some assets were sold at or</p> <p>10 above their marks, and many of them were sold</p> <p>11 below, and many of them are still there.</p> <p>12 Q. Let me ask it differently. Has</p> <p>13 Barclays undertaken some kind of after-action</p> <p>14 assessment or any kind of assessment or review to</p> <p>15 see if, in fact, they made money on the securities</p> <p>16 and other assets that they acquired from Lehman?</p> <p>17 A. No.</p> <p>18 Q. You have never seen any reports to</p> <p>19 that effect or any kind of spreadsheets to that</p> <p>20 effect?</p> <p>21 A. At various times, at various times,</p> <p>22 more for management reporting purposes I think</p> <p>23 than financial reporting purposes, we, my group or</p> <p>24 Barclays had -- product control has attempted to</p> <p>25 describe how much money was made or lost over a</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 period of time on certain aspects -- certain</p> <p>3 assets.</p> <p>4 A -- I think it was included, I think</p> <p>5 it was included in a footnote to the year-end</p> <p>6 financial statement, is the acquisition balance</p> <p>7 sheet for Lehman. I don't remember whether it was</p> <p>8 actually published or whether I just saw it and it</p> <p>9 was somehow integrated into it. I think it was</p> <p>10 published.</p> <p>11 You know, that report is a negative</p> <p>12 goodwill number, is purportedly a profit of the</p> <p>13 acquisition, but it includes many things that are</p> <p>14 nothing to do with the assets that we have talked</p> <p>15 about here because it includes items such as</p> <p>16 goodwill, real estate, receivables, et cetera.</p> <p>17 So there was -- there is a statement</p> <p>18 there about supposedly some number that is</p> <p>19 attached to the profitability. But I think of</p> <p>20 that as an accounting requirement report for</p> <p>21 financial reporting purposes of the transaction.</p> <p>22 But that describes the valuation of</p> <p>23 the securities according to a set of rules that</p> <p>24 are influenced by accounting guidelines and rules</p> <p>25 on a particular day. And I think the date that</p>
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<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 was picked was the 22nd.</p> <p>3 And a very sophisticated set of rules</p> <p>4 were developed over the subsequent months that</p> <p>5 would guide PWC and Barclays' product control and</p> <p>6 finance to be able to be comfortable that it had</p> <p>7 adequately come up with an asset value for these</p> <p>8 assets and for other things that were -- so</p> <p>9 including certain contingent claims that were</p> <p>10 going to be included on the balance sheet.</p> <p>11 But it doesn't say anything there</p> <p>12 about how much profit or loss was made on those</p> <p>13 assets after that date, and it is an incredibly</p> <p>14 difficult exercise to actually aggregate all of</p> <p>15 that because of the three different places that I</p> <p>16 described to you that the assets ended up.</p> <p>17 Some assets were sold to traders and</p> <p>18 then they subsequently sold them. So there is a</p> <p>19 P&amp;L item, if you like, that turns up in the</p> <p>20 negative goodwill that's on that acquisition</p> <p>21 balance sheet. There is a P&amp;L that we experienced</p> <p>22 between what was the price that PMTG seemed to</p> <p>23 acquire the assets and where it sold them to the</p> <p>24 desks, and then there is another item where the</p> <p>25 desk sold it to the street and there are gains and</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 losses on the various hedges, and I'm using that</p> <p>3 word in the way you were using "hedges," the</p> <p>4 various instruments that were used to try to risk</p> <p>5 manage while the assets were in situ in the P&amp;L.</p> <p>6 There is the gains and losses on those.</p> <p>7 So I have never seen a number which</p> <p>8 says how much did we make.</p> <p>9 Q. I think I understand what you are</p> <p>10 saying, but the disclosure that was made in the</p> <p>11 financial statement is a snapshot of the gain on</p> <p>12 acquisition, right? It doesn't even purport to</p> <p>13 cover gains that might have taken place later as</p> <p>14 to those securities?</p> <p>15 A. Or losses, more importantly losses,</p> <p>16 right.</p> <p>17 Q. So my question is, I see the snapshot</p> <p>18 of the gain on acquisition of about 4.2 billion</p> <p>19 dollars. Has Barclays undertaken any efforts</p> <p>20 after that to assess what we are talking about,</p> <p>21 the possibility that it gained or lost on all the</p> <p>22 securities it acquired?</p> <p>23 A. Not in an isolated way. Clearly, all</p> <p>24 those gains and losses are part of the normal P&amp;L</p> <p>25 that all of the desks report, but there isn't a</p>



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2 line item --  
3 Q. OK.  
4 A. -- that says P&L related to Lehman  
5 securities.  
6 Q. I understand that. I was just -- as a  
7 layman, outside the organization, I would think  
8 someone would have said, hey, did we make any  
9 money on that pool of securities we bought last  
10 year?  
11 A. There is certainly -- people  
12 frequently asked, but it is not easy to answer  
13 because -- and it is a tremendous amount of work,  
14 so no one bothered to answer it.  
15 Q. Just to trace them in all the places  
16 they went?  
17 A. Trace them, and there were some  
18 aspects of it that had to be done so there was  
19 adequate reporting in trading statements and  
20 year-end statements and things, but -- and I don't  
21 think it is ever, you know, that -- the  
22 acquisition gain that you are referring to doesn't  
23 ascribe gains or losses on the securities. It  
24 just talks about on everything that was subject  
25 to -- was either -- just the difference between

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2 assets. I don't think we -- I don't think we ever  
3 went back to remark -- we didn't really -- my desk  
4 didn't really care very much about what the mark  
5 was on the 19th in many respects. We cared about  
6 what it was for a certain date that we took a  
7 snapshot, so that we could report day two P&L, or  
8 day one P&L, day two P&L, day two P&L being  
9 everything after -- all the P&L associated with  
10 the assets after they have been booked.  
11 So we cared about a particular  
12 snapshot, and I think we took a number that was  
13 closer to -- a date that was closer to the end of  
14 the month for that purpose. End of September.  
15 And then we looked at P&L changes from that date  
16 on individual line items. Not aggregate but just  
17 individual line items.  
18 Q. That was your best estimate at the  
19 time --  
20 A. At that time, and then that continued  
21 to be refined as we found out more about the  
22 securities or passed them out to the respective  
23 desks or sold them or what have you.  
24 Q. Sure. But for financial reporting  
25 purposes, that was your best estimate at that

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2 the assumed assets and liabilities of the  
3 transaction.  
4 Q. Were you involved in helping provide  
5 information that would go into the assessment of  
6 that initial gain on acquisition?  
7 A. Yeah, once again we could -- the  
8 estimated values for the securities was provided  
9 by my desk to finance.  
10 Q. And you mentioned some stringent rules  
11 that were applied in that regard?  
12 A. That's somewhat after the fact. As I  
13 described it, you know, it is not exactly a  
14 normal -- as much as possible Barclays, given the  
15 environment we were in, was attempting to follow  
16 as many of the normal rules and procedures that it  
17 would do for an acquisition, even though this one  
18 was obviously extremely large.  
19 So, you know, initial estimates of  
20 what that balance sheet would have looked like  
21 were on -- in relation to the securities, were  
22 derived from my desk's estimates, where they were  
23 available, of the values for the securities.  
24 With time, obviously the individual  
25 desks that were receiving the assets marked the

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2 time?  
3 A. That was the best estimate. We  
4 provided the best estimate, and then product  
5 control started to -- as things started to  
6 stabilize, product control took over its normal  
7 process about starting to think about how it would  
8 prepare its financial statements, and then  
9 therefore, obviously our information was an input  
10 to that, but it was only an input, and they used  
11 multiple sources, I think, to construct the  
12 assumed valuations for the 19th.  
13 (Exhibit 390-B, document Bates stamped  
14 BCI-EX-S 52667 through 68 with attachment  
15 marked for identification, as of this date.)  
16 Q. Mr. King, handing you a copy of a  
17 document marked as Exhibit 390-B, which has Bates  
18 ranges BCI-EX-S 00052667 through 668, and then  
19 there is an attachment which is produced in native  
20 form which we have attached to the exhibit.  
21 It is a Monday, September 22nd e-mail  
22 entitled "Long Island Draft Balance Sheet/Goodwill  
23 Calc." Do you see that?  
24 A. Um-hm.  
25 Q. After you have had a moment to review

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2 it, I would like to ask you a question about it.  
3 MR. STERN: Have you read the e-mail?  
4 THE WITNESS: Yeah, I will come back  
5 to that in one second.

6 A. Yes.

7 Q. My question is, do you see the entry  
8 on the first covering e-mail -- I understand that  
9 you are not a party to that e-mail, but it is  
10 discussing the acquisition balance sheet, and the  
11 fourth bullet down refers to the "2.83B valuation  
12 adjustment is S. King's first cut only." Do you  
13 see that?

14 A. Yes.

15 Q. And if we refer to the last page of  
16 the document, I see an entry for 2.83 billion. Do  
17 you know what -- is that the 2.83 adjustment,  
18 first-cut adjustment that the e-mail is talking  
19 about?

20 A. Yes.

21 Q. Do you know what -- can you explain to  
22 me what that valuation adjustment is?

23 A. Yes. It is linked to your previous  
24 questions. There has to be -- and this changed  
25 over time. There has to be -- this concept, and

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2 we have touched on it a few times during the --  
3 through the course of the conversations, of there  
4 being a value, a valuation, seems to imply that  
5 there is a single price, but of course that isn't  
6 actually the case.

7 When you are referring to orderly  
8 liquidation -- for example, I think the e-mail  
9 that we had in front of us earlier was that the  
10 CMO guys told me he was told to give two months  
11 orderly liquidation in the bid in comp. So there  
12 he has used -- you can see he is being given an  
13 instruction. That is actually a quite formal  
14 instruction.

15 An orderly liquidation mark is  
16 something that people understand to mean -- that  
17 was on Exhibit 389-B. That was something that  
18 people sort of understand to mean if there is --  
19 sometimes we come into work in the mornings and we  
20 get a phone call saying, will you bid on the  
21 following. And if we have got enough capital and  
22 we feel like doing it, then we may say yes, and  
23 the guy may want to sell us the stuff for  
24 30 million dollars and we may bid 10. And if he  
25 really needs a bid, then he will hit our 10.

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2 I wouldn't describe that as an orderly  
3 liquidation. And in fact, we have seen a lot of  
4 that during the course of the last two years, of  
5 course, as so many counterparties have defaulted  
6 on obligations and their assets have been seized  
7 and liquidated.

8 Under normal circumstances it is not a  
9 straightforward process. In marking our books, we  
10 have to try to assess whether or not we are  
11 supposed to use those pricing points in marking  
12 assets.

13 They are clearly actually where  
14 something just traded. Something was sold from  
15 one party to another party at that price.  
16 Somebody was willing to trade. But they weren't  
17 really willing to trade -- it wasn't particularly  
18 by design that they traded there, they had to  
19 trade, it was sold. Maybe it was seized and sold  
20 or they needed to sell it to create liquidity, but  
21 it wasn't exactly orderly.

22 So on that page 389-B, where it says  
23 "orderly liquidation mark and bidding comp,"  
24 that's kind of -- it's trying to highlight there  
25 really is a little bit of a difference between the

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2 two of those.

3 We mostly mark our positions as if  
4 there was an orderly disposal. Not necessarily  
5 that that's what we plan on doing with them. We  
6 might hold them, might sell them. There is lots  
7 of things we try to do, but we try to keep that  
8 concept in mind.

9 At this stage, on Monday, the 22nd,  
10 this balance sheet, the valuation adjustment was  
11 equal to the difference between -- I think it was  
12 the 45 point -- Thursday close. The  
13 45.18 billion, which is the Thursday -- this is  
14 the inventory Thursday close, 45.18. That would  
15 have been, if memory serves, the BoNY marks for  
16 the portfolio.

17 And -- there is a little bit of P&L in  
18 here. I think that is probably carried, and then  
19 the valuation adjustment on this day, this isn't  
20 necessarily on subsequent balance sheets, but on  
21 this day would be equal to the difference between  
22 the BoNY -- I think the BoNY marks and our current  
23 best guess, based on everything that we have got  
24 available to us, of the orderly liquidation mark.

25 So it is trying to get from one number

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to another number. With time, both of those, the definitions of those were clarified, but that was what this was on that date, and that's why Gary refers to it as valuation adjustment, as S. King's first cut only.

It is not an upper-case term, valuation adjustment. It was just a term that we started to use to be the difference between where there was some observable marks that could have been the BoNY marks and where we were saying we would probably book things. Again, it was to try to make the difference between the day one and day two P&L.

Q. This is Monday, the 22nd. That's the date on which the financial statement ultimately says, let's report the acquisition as of on that date, right?

A. Yes.

Q. If you look at 5, I don't know if that helps in your answer. I'm not sure you saw that.

A. OK.

Q. So that confirms that the --

A. That's actually -- so we put that -- it is in there, initial estimate of the adjustment

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to Barclays' marks, BoNY prices and Barclays' marks. That's precisely that.

Q. The BoNY price of 45 billion is the BoNY marks assessed on what pool of assets?

A. What is -- I don't know if this is clear on this. It is just inventory on this day.

Q. Maybe I could ask a clarifying question while you look at that.

Is the 45 -- my question is, is the 45.18 the BoNY marks for the assets you received from the repo, or does it also include other assets that you received later?

A. That's what I was just trying to check. There is a version of this where they are separated. But I don't think we were able to do that as early as the 22nd.

Q. That's the Monday following.

A. Yeah. Because I can only see one -- 45.18 inventory, 15c3, financial assets.

Yes, I think it is 45.18. It is just whatever we -- at this point whatever we knew of.

Q. If you read further down on that column, you will see a reference to 15c3 assets, so that's a separate asset that you received over

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that weekend, correct?

MR. STERN: Objection to the form.

Q. If you can describe that, that's fine.

A. On the 22nd, I wouldn't even have known what 15c3 meant, and 15c3 asset wasn't -- is not a security or anything that we -- it is just a line item on here. It is not an asset -- it is not a tradable asset.

Q. OK. And the 7 billion in cash, is that the -- in the next, next line item, 7 billion in cash, is that the 7 billion that came over to Barclays as a result of the repo transaction?

MR. STERN: Objection to the form.

You can answer.

A. The cash, the 7 billion was the cash item on here. Actually, I have seen -- obviously I've seen this before and various subsequent iterations of it. But we didn't prepare this.

So --

Q. "We" meaning --

A. My desk. So we didn't have any input to anything that was -- you know, we would provide Gary numbers, and we wouldn't have had any input below inventory, because they are not securities.

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Now, the 7 billion dollars is the cash, but I know that the 7 billion dollars is the cash that we thought we had in relation to the nonsecurity-based collateral for the repo facility.

Q. If I look on here, I don't see -- well, could you tell me if there is any entry on here that covers what we have been calling unencumbered assets or the clearance box assets, or have they not yet come over to Barclays?

A. I -- as I say, there must be a hundred of these balance sheets that were, you know, as product control refined them. I don't know how many I have seen, but I've seen a few of them between here and the end of the year. This is an early version of it. And so you will have to forgive me if I can't remember exactly the 45.18.

Inventory on the Friday morning, I think from memory, is everything that we thought we received at the -- by the date of -- by some date on which we provided -- I don't know what date -- I don't know what date Gary is producing this, so it might have been this is from the Friday numbers or Saturday numbers or Sunday

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2 numbers. It is probably not the Monday numbers,  
3 because it is produced on Monday. I suppose it is  
4 produced late on Monday.

5 But it doesn't separate out the  
6 unencumbered assets that we had already received  
7 by that point. It doesn't separate it out. So I  
8 think that everything that we had received to this  
9 point was in that number.

10 Q. Back to the 2.83 valuation adjustment.  
11 How did you come up with that 2.83 number? Is  
12 that the top-down analysis we talked about  
13 earlier?

14 A. No. We never came up, so we, my group  
15 never came up with 2.83. 2.83 is a difference  
16 between a set of marks and our marks. So it is  
17 not like I come up with -- it is not that I come  
18 up with 2.83. We would come up with on here 42.55  
19 as a -- on the spreadsheet or the inventory, and  
20 say we've marked all the individual line items,  
21 and then product control will tell us at that --  
22 based on all your individual marks or your best  
23 estimate here -- I think by this date we were  
24 still working on spreadsheets -- we estimate that  
25 what we have got is worth 42 and a half billion

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2 dollars.

3 Then they would compare that to the  
4 marks for some of the inventory at the BoNY marks,  
5 and that's what that last paragraph says. It said  
6 the trades are initially booked at BoNY prices, so  
7 no one is calculating the 2.83. The 2.83 is the  
8 difference between the BoNY marks and the desk  
9 marks.

10 Q. And the desk marks are -- Barclays is  
11 going CUSIP by CUSIP and putting a mark in for --

12 A. Where possible, yes. Where possible.  
13 And it is the best guess by the desk, by my desk  
14 using input from as many other sources as we  
15 possibly can of an orderly liquidation mark, not  
16 where we would -- if we were to -- if we had  
17 turned around and asked somebody to bid on this  
18 day for 42 and a half billion dollars worth of  
19 securities, it would have been 30-something  
20 billion.

21 Q. I understand that. I'm just trying to  
22 understand the origin of the marks that Barclays  
23 put on it. Did Barclays adopt marks that Lehman  
24 had put on these assets?

25 A. No.

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2 Q. I have heard testimony in other  
3 instances where Lehman valued those assets at  
4 42.9. This appears to be very close to the  
5 Barclays marks. Did you have any consideration or  
6 discussion between Lehman and Barclays as to their  
7 own marks?

8 A. Well, some of the marks were -- we  
9 actually used to make the unfunny joke that 42 and  
10 a half versus 49, you know, or 50 versus 48 and a  
11 half, it is kind of close. It is -- that's half  
12 of a billion dollars, so that's a gap. That's  
13 500 million dollars of, you know, rounding.

14 And that would have come from more of  
15 a -- it just sort of highlights just how much  
16 uncertainty there was. You would be very  
17 surprised if there was absolutely no relationship  
18 between the BoNY marks, the JP marks, the Lehman  
19 marks, the Barclays estimates. If they weren't of  
20 some similar order of magnitude, you know you have  
21 a major failing of a control system somewhere.

22 But still, I don't -- we never really  
23 needed to use the Lehman marks, other than -- the  
24 only place where we used the Lehman marks was  
25 where we had no idea what the security was other

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2 than a CUSIP, some generic name, and the Lehman  
3 mark, then we would have said we will value it at  
4 a discount to the Lehman mark because we have  
5 nothing else to go on. It could be worth nothing.

6 Many of them were worth nothing. Not  
7 because Lehman had -- bear in mind, the Lehman  
8 marks were from days -- they were old, they were  
9 what we call stale. Many of them were -- I think  
10 most of the stuff we were looking at earlier was  
11 on the 12th, which was before the bankruptcy of  
12 Lehman Brothers Holdings, and even during that  
13 previous week, most of the traders were out -- at  
14 Lehman were more worried about their own futures  
15 than necessarily marking their books, and markets  
16 were already very, very distressed.

17 So the idea that those markets were  
18 good on -- those marks were good on the 22nd after  
19 two bankruptcies and Merrill being acquired by --  
20 or being bailed out, is -- there is a  
21 tremendous -- you know, the value of them is  
22 that -- so there were cases where we said -- and  
23 some of them were appropriately marked by Lehman  
24 but worthless to Barclays.

25 A good example would be there were



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warrants that were in the repo facility, I remember roughly it was 300 million dollars as a good example. 300 million dollars issued by Lehman referencing other credits.

Now, those, as long as Lehman exists, are worth roughly the amount of the reference credit, but the moment that Lehman defaults, they are worthless. So Lehman had them appropriately marked where they would have traded them prior to Lehman's insolvency. They are just called fixed income security on a schedule that we had, and they are actually worthless, and there were instruments like that in the repo facility.

Now, we wouldn't have known that until days, many days later.

Q. So this 2.83 adjustment is derived from comparing the BoNY marks to Barclays' own marks?

A. PMTG's current best guess at an orderly liquidation.

Q. At that particular date?

A. On that particular date. It doesn't say if the other bidding -- you know, that's an orderly liquidation as opposed to a bidding comp

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liquidation.

MR. STERN: Should we take a short break?

THE WITNESS: Sure.

(Recess)

BY MR. HINE:

Q. Mr. King, I am going to hand you a copy of a document marked as Exhibit 86-B. After you have had a minute to look at it, I would then like to ask you a couple of questions, first regarding whether you have ever seen this document before.

MR. STERN: Take your time and look at it, and that's the question: Have you ever seen it before?

THE WITNESS: OK.

Q. Have you ever seen this document before, Mr. King?

A. I've never seen the document before. I don't think I have seen the spreadsheet before.

Q. Does it look like anything else you have seen before?

A. Unfortunately, it looks like a tremendous number of things I have seen before,

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but I don't think I have -- I don't know -- I don't really recognize this one.

Q. Do you have any understanding or can you give me your best -- withdrawn.

Do you have any understanding of what this document is modeling?

MR. STERN: Objection to the form.

Calls for speculation.

Q. Attempting to model?

MR. STERN: You are asking for him to guess or --

MR. HINE: Yeah.

MR. STERN: I object to guessing.

Q. You can answer the question.

A. Well, it describes PMTG and it -- and the cumulative amounts are the same as the sheet we looked at before. Slightly different. So it looks like -- it looks like many reports that were produced around this time that are of a population of securities that in some way are linked back to that, but I don't know this -- especially not with -- without any date or anything on it, it is just one of any number of spreadsheets.

Q. Do you know -- can you tell by looking

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at it, the form, who, which department within Barclays might have prepared this?

A. Only by the fact that it talks about PCG values, as well as PMTG, and -- I would think it is a -- well, it is a reconciliation of something with something, and it looks -- it clearly has a similar set of securities as the previous -- as 39-B, I think it is, but what it was trying to achieve or who prepared it -- it could be either our desk or PCG. It would have to be one of the two.

Q. Have you ever heard of anything referred to as PCG liquidity value?

A. Isn't that just --

Q. That's the column heading for column F. Do you see that?

A. Isn't that just D minus E?

Q. It very well could be. I'm curious if you ever heard the term used, "PCG liquidity value."

A. No.

Q. Is that -- do you see the column marked E which says "MV09/22 with bid-offer"? Do you see that column?



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<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. Did your department undertake any</p> <p>4 efforts to, on or around 9/22, to solicit bids or</p> <p>5 offers for these types of securities?</p> <p>6 A. No.</p> <p>7 Q. Did you have any idea of where that,</p> <p>8 the entries in that column would have come from?</p> <p>9 MR. STERN: Objection to the form.</p> <p>10 You can answer.</p> <p>11 A. I -- I would -- I am -- I would be</p> <p>12 very surprised if column E -- column E, market</p> <p>13 value 09/22 with bid offer, is a term that we in</p> <p>14 PMTG -- those could be -- they could have come</p> <p>15 from PMTG. They might have come from an aggregate</p> <p>16 of other places.</p> <p>17 I would think they came from PMTG, and</p> <p>18 as far as I can see, F is just D minus E.</p> <p>19 Q. OK. Do you see on the left-hand</p> <p>20 column there appears to be a list of various</p> <p>21 categories of securities? Do you see that?</p> <p>22 A. Yeah.</p> <p>23 Q. Below that, PMTG and then another</p> <p>24 entry for PMTG2. Are those -- other than being</p> <p>25 the initials for your department, would you --</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 could you -- do you have any idea what securities</p> <p>3 are being pooled in those entries?</p> <p>4 MR. STERN: Objection to the form.</p> <p>5 A. No. I mean over there -- you say this</p> <p>6 is on the 22nd?</p> <p>7 Q. I don't have a date for it. I see the</p> <p>8 entry -- well, the title at the top appears to be</p> <p>9 22 September.</p> <p>10 A. Oh.</p> <p>11 MR. STERN: The question is, do you</p> <p>12 have any idea what securities are being</p> <p>13 pooled in those entries. That's the</p> <p>14 question.</p> <p>15 A. 1.17 billion. I think. I would just</p> <p>16 be guessing.</p> <p>17 Q. Don't know?</p> <p>18 A. No. I mean I would be guessing rather</p> <p>19 than I know.</p> <p>20 Q. OK. Mr. King, I would like to walk</p> <p>21 through a couple of documents here just to ask you</p> <p>22 some specific questions of those documents.</p> <p>23 The first one, I am going to hand you</p> <p>24 what was previously marked as Exhibit 302-A. It</p> <p>25 is very thick. I don't want to ask you about the</p>
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<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 whole document, I just want to ask you about the</p> <p>3 cover e-mail. But take your time to review</p> <p>4 whatever you need to review.</p> <p>5 It appears. This is dated Wednesday,</p> <p>6 the 17th. It appears that you are providing</p> <p>7 comments to the asset purchase agreement; is that</p> <p>8 correct?</p> <p>9 MR. STERN: Objection to the form.</p> <p>10 Q. Let me rephrase.</p> <p>11 What is this covering e-mail?</p> <p>12 A. It is an e-mail from me to Patrick,</p> <p>13 Mike and Jonathan. It is called asset purchase</p> <p>14 agreement comments. And those are comments to the</p> <p>15 asset purchase agreement that I would have</p> <p>16 provided to them.</p> <p>17 Q. OK. Do you recall providing comments</p> <p>18 to the asset purchase agreement?</p> <p>19 A. I now do. But I would have forgotten</p> <p>20 about it otherwise.</p> <p>21 Q. OK. I guess my first question: The</p> <p>22 agreement is signed on the 16th, so why are you</p> <p>23 providing comments the day after it is signed?</p> <p>24 A. I don't know. On that, I -- don't</p> <p>25 forget, to me, I then didn't know -- until you</p>	<p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 told me earlier today that there was an agreement</p> <p>3 signed on the Tuesday, I didn't know that. Or at</p> <p>4 least I certainly didn't remember it.</p> <p>5 Q. Why would you be sending these</p> <p>6 agreements to Mr. -- these comments to Mr. Cox?</p> <p>7 Do you recall?</p> <p>8 A. No.</p> <p>9 Q. Do you see in the first entry it talks</p> <p>10 about purchase assets, and the third sentence in</p> <p>11 that entry, entry number one, says, "Can</p> <p>12 securities be sold to LBI without approval at a</p> <p>13 discount to current mark?" Do you see that?</p> <p>14 A. Yeah.</p> <p>15 Q. Do you recall why you were making that</p> <p>16 comment?</p> <p>17 A. No, though reading it in its entirety,</p> <p>18 it also says, "Are hedges put on by LBI after the</p> <p>19 agreement is signed included? Any limits or</p> <p>20 restrictions?"</p> <p>21 So on the 17th, you know, on the 17th</p> <p>22 is before we got into the repo. This is the --</p> <p>23 these are -- these are commenting on something</p> <p>24 before we actually -- not on the final form of the</p> <p>25 transaction.</p>

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Q. Now, when it says discount, do you recall any discussions or having any understanding at the time that Barclays was acquiring assets from Lehman at a discount?

MR. STERN: Objection to the form.

Asked and answered.

A. I wasn't -- can you repeat that actually.

(Record read)

A. As I pointed out before, I wasn't party to any of those discussions.

I would have to also question discounts to what. If it is a discount to BoNY's marks or something, then I would say I was assuming that my desk was viewing the assets as not being worth the BoNY marks, but I don't know if that's what you mean by discount.

Q. I'm just trying to exhaust your recollection on discussions you might have heard or understandings you might have heard about the discussions between Barclays and Lehman.

MR. STERN: Your question? I don't think there is a question.

Q. So let's reread the question. Do you

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recall any discussions or having any understanding at the time that Barclays was acquiring assets from Lehman at a discount?

A. So I wasn't party to the discussions -- to any discussions, but I didn't think that -- if I -- I would have to define discount to what, and then if I -- if you said -- if you had asked me the question did I think that the -- we should pay less than where Lehman had marked the securities on the 12th or where BoNY or JP had marked them on the 17th, then I would say yes. But I don't know whether that's what you are asking.

Q. I understand your answer. I was asking if you have any knowledge of the discussions between Lehman and Barclays --

A. No.

Q. -- as to that subject?

A. No.

Q. Can we skip ahead to the repo transaction, which is the September 18 repo.

A. Yeah.

Q. Did Barclays provide a list of assets that it wanted excluded from the repo or would not

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accept as collateral in the repo?

A. No. We didn't have any option on the -- going into the -- we weren't -- "we" being PMTG, weren't aware of any flexibility as to what we were going to receive. That was part of the problem, was we are going to take delivery of -- remember you asked me the questions earlier about what were you looking at, Steve, and I was provided an inventory of securities on the Wednesday, Thursday, that represented what I would take delivery of.

And then it did happen to change by Friday, but that was not what we were expecting to receive, that list of securities.

Q. I am talking about before the Friday. I'm talking about in the Wednesday, Tuesday, whenever you are talking about the repo, were there certain assets that Barclays would not accept as collateral for that repo?

A. No. I -- on the Wednesday -- so the Wednesday or Thursday we are analyzing the repo, we just assumed we were taking delivery of whatever was described to us as being in the repo on the Thursday.

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Q. Described to you by who?

A. In the schedule of securities provided -- you asked me the question earlier as to -- about a list of securities that was in the repo, and I answered that I didn't know where it came from, whether it was from operations or the Fed or whoever, but somebody provided us a list of securities on the Thursday, which is the list we thought we would take delivery of. It wasn't the list that we ultimately took delivery of, but it was the list that we passed out to the various traders.

We didn't think that we had any option to pick and choose.

MR. STERN: Is that the list that you referred to as having an hour and a half to look at?

THE WITNESS: The hour and a half to look at, yes.

Q. This might clarify the question. I am going to hand you a document that was previously marked as 143-B. It is an e-mail stream of which you are not a party to until you get to page 2.

MR. STERN: Take a look at the whole

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2 thing.  
3 Q. You can look at the whole thing. I am  
4 just directing your attention to an entry on  
5 page 2, which is an e-mail from you to David  
6 Petrie, and it attaches something called excluded  
7 mortgage assets.  
8 A. Right.  
9 Q. So take your time to look at the  
10 document, but my questions are going to be  
11 primarily about that attachment.  
12 A. OK.  
13 Q. Have you ever seen this document  
14 before?  
15 A. Yes.  
16 Q. Can you tell me what the attachment  
17 which is titled "Excluded Mortgage Assets 9/17/08"  
18 is?  
19 A. Yeah. It is from the 6.5 billion  
20 dollars of assets on the -- let me look here.  
21 Q. Is that the exhibit we first used in  
22 this --  
23 A. Yeah, I think so.  
24 Q. I think it is --  
25 A. 388-B.

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2 Q. And then that agreement eventually  
3 changes toward the end of the week?  
4 MR. STERN: Objection to the form.  
5 A. As I have said, I only know that what  
6 we were looking at at the beginning of the week  
7 didn't end up being the transaction. I don't know  
8 how the agreement changed.  
9 Q. Let's talk about mortgage, the pool of  
10 mortgages-related securities itself. What  
11 happened to that? Did Barclays end up getting  
12 those securities?  
13 A. Some of them, because some of them  
14 were in the repo, but not all of them were in the  
15 repo.  
16 Q. And is the part that was in the repo  
17 the securities that did not make it to this  
18 schedule?  
19 A. I think I described --  
20 MR. STERN: Let me hear that question  
21 again, please.  
22 MR. HINE: Let me try again. That was  
23 confusing.  
24 Q. You talked about this schedule, and I  
25 am talking about Exhibit --

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2 Q. The 6.6 billion in mortgage?  
3 A. Yeah. So once upon a time in the  
4 first part of the week, we had suggested that we  
5 wouldn't -- remember I said that we wouldn't take  
6 all of the mortgage and mortgage-backed total. So  
7 we divided it into two pools, the included and the  
8 excluded.  
9 So that e-mail from the 17th, unless I  
10 have made a mistake, it is an e-mail about the  
11 assets that we wouldn't be taking out of the  
12 mortgage and mortgage-backed securities.  
13 Q. So these are mortgages you are not  
14 going to take?  
15 A. These would be -- yes, that's the --  
16 well, it was -- in the early part of the week it  
17 was the list of securities which we were  
18 suggesting that we wouldn't take, "we" being my  
19 group, suggesting that we would rather not take  
20 out of the total mortgage and mortgage-backed  
21 total.  
22 Q. It is really nothing to do with the  
23 repo. It has to do with the agreement to only  
24 take a portion of the mortgage-related securities?  
25 A. That's correct.

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2 MR. STERN: 143-B.  
3 Q. 143 -- all right, 143-B, that's the  
4 schedule of mortgage-related securities that --  
5 A. Correct.  
6 Q. -- Barclays did not want included in  
7 the transaction, correct?  
8 A. Right.  
9 Q. And that was -- the counterpart to  
10 that is the securities that Barclays would allow  
11 in the transaction, right?  
12 MR. STERN: Objection to the form.  
13 A. I'm not sure what we mean by -- if we  
14 mean what we understood at the beginning of the  
15 week my group was asked to assess as a portfolio  
16 of assets that would end up being part of the  
17 purchase agreement, then this pertains to that.  
18 What ultimately happened was of course completely  
19 different.  
20 Q. Well, that's what I am asking. What  
21 ultimately happened to the pool of mortgage-backed  
22 securities?  
23 A. Some of them I don't know, because the  
24 388-B balance sheet was -- was not completely --  
25 you know, it -- what does he have, 65.1 -- it says

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65.16 billion dollars. That's on 388-B again,  
65.16 billion.

So it is bigger than -- that number is  
bigger than the repo facility which at any one of  
the various marks that people had put on was less  
than 50 billion dollars.

So not -- using your Venn diagram, not  
all of these securities are in the repo facility.

MR. STERN: And you're pointing to  
388-B.

THE WITNESS: I'm pointing to 388-B.

Q. I'm just trying to chase what happens  
to the pool of mortgage-backed securities that  
were originally marked as 60 billion on 388-B,  
what happens to them by the end of the week?

A. I don't know on all of them. All I  
know is some of them were in the list -- some of  
them -- some of them were collateral that was  
pledged to the Fed as far as my desk knew on the  
Thursday, Wednesday, Thursday.

Q. The Fed?

A. Yeah. Some of them were in the Fed  
facility. Every single -- a bank -- I mean every  
single -- a balance sheet is made up of assets and

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liabilities. Some of them -- all assets have to  
be financed, especially for a broker dealer like  
Lehman. So, many of these assets were financed by  
the Fed. Therefore, they would have also been in  
the Fed facility.

Q. Right.

A. But there is 65 billion of assets  
here, so they couldn't all fit in the Fed  
facility, which was only 50 billion.

Q. I understand.

A. Some of them weren't even in what we  
thought was the Fed facility on the Wednesday,  
Thursday.

Q. OK.

A. So some of them were just gone.

MR. STERN: But he is asking you about  
Exhibit -- the list on Exhibit 143-B.

THE WITNESS: Yeah.

MR. STERN: What happened to those.

Q. No, I am asking the pool of securities  
on 388-B --

MR. STERN: You didn't ask that.

MR. HINE: Yes, I did.

Q. It was originally marked at

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6.5 billion, and you were describing to me that  
some of that made it into the repo, as I  
understand it.

A. Some of them were in the -- some of  
them -- if we looked at a list of securities on  
388-B, some of those securities, many of those  
securities were also in -- also being financed by  
the Fed.

Q. Right.

A. So they were what we thought were in  
the repo facility that we were going to assume  
when we reviewed that list of securities on the  
Wednesday, Thursday. Not all of them, though.  
Some of them were just not there. And some of  
them would have therefore been excluded assets and  
some of them would have been included assets.

I seem to -- I remember that there was  
not many of the excluded assets -- no, actually I  
can't remember exactly how many of the included  
or -- since the included and excluded list  
pertained to the Lehman balance sheet, not to the  
repo facility, there were both included and  
excluded assets in the Thursday repo facility.

Q. So in the Thursday -- September 18

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Thursday repo facility --

A. Before it was the Barclays -- the Fed  
one.

Q. No. I want to know -- I want to keep  
the story going. The September 18 repo facility,  
some of those assets eventually make their way to  
Barclays, and within that pool of assets, there  
are a certain number of mortgage-related  
securities; is that right?

A. Yes. There was some -- some of the  
mortgage-related securities were in the Fed  
facility. Some other securities as well.

Q. Do you know how many of the securities  
within -- that came to Barclays constituted  
mortgage-related securities?

A. There is a difference. Again on the  
Thursday when we were looking at what we thought  
we were going to receive from the Fed, there was a  
certain amount of the securities that were on that  
list.

On the Friday, by the Friday when  
we -- after the Fed facility has been refinanced  
by the Barclays repo facility, then there were --  
out of the 30 or so billion dollars of the



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2 securities that were both in the Fed facility that  
3 ended up in the Barclays facility, there were some  
4 of the mortgage assets, but in addition there were  
5 other assets, other mortgage assets, some other of  
6 the mortgage assets which we hadn't looked at on  
7 Thursday, but we had looked at on Tuesday, that  
8 turned up in the extra 10 billion.  
9 Q. So as you talked about earlier, on  
10 Friday you realize there is two different types --  
11 you assumed two different types of securities,  
12 about 32 billion worth of securities that you  
13 already knew about using the JPM marks?  
14 A. Correct.  
15 Q. And 10 billion using the BoNY marks of  
16 securities that you didn't expect to receive?  
17 A. Correct.  
18 Q. There were mortgage securities in both  
19 of those groups; is that right?  
20 A. That's correct. Yes.  
21 Q. Do you know about how much?  
22 A. I remember it being about 3, 3 billion  
23 I think. It was about 3 billion, and we thought  
24 they were worth about 1 and a half.  
25 Q. And those are the types of -- when you

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2 Mr. Malloy around -- on Friday, the 19th?  
3 A. I'm on the e-mail, so yes.  
4 Q. Do you have any understanding of why  
5 Mr. Malloy prepared this analysis?  
6 A. Marty was just involved in the  
7 settlement of the repo, so he -- I don't know why  
8 he produced this in particular. It is a pretty --  
9 the original e-mail is a pretty vanilla e-mail  
10 just saying -- I don't know who Jackie Stanley  
11 Jones is, but it is just a description of Fed wire  
12 securities, but I don't know what it is other than  
13 that.  
14 Q. You don't know why he prepared it?  
15 A. Marty and others, Gerard and others  
16 needed to know what was being received by  
17 Barclays, so there would have been a lot of  
18 e-mails on Friday morning saying -- starting to  
19 try to get a handle on what had been received.  
20 This looks like one of many of those.  
21 Q. Did you ever hear any discussions on  
22 Thursday or Friday of that week about the amount  
23 of excess collateral that had been posted towards  
24 the repo?  
25 A. I've never heard -- I don't think I

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2 say 3 billion, that's within both of those two  
3 groups?  
4 A. Yeah. That's what I remember.  
5 Q. And those are the types of securities  
6 that you have been focusing on because they get  
7 put into your group eventually?  
8 A. That's correct, yeah.  
9 MR. STERN: Is there a question?  
10 MR. HINE: No. He answered it.  
11 MR. STERN: Just wait for a question.  
12 BY MR. HINE:  
13 Q. Did you want to elaborate on  
14 something?  
15 A. No. I was just thinking about that.  
16 That's fine.  
17 Q. Mr. King, I am going to hand you  
18 another document, that has been previously marked  
19 as 144-A, and my question is whether you have ever  
20 seen that before.  
21 A. Yes.  
22 Q. What is this document?  
23 A. I've seen it before, but I don't  
24 really know.  
25 Q. Did you receive a copy of this from

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2 have heard the term "excess collateral" per se,  
3 but there was -- we were obviously extremely  
4 worried on the Friday. We were very worried on  
5 Wednesday and Thursday. We had a population of  
6 securities and we were very worried that those  
7 really might not be worth 45 billion dollars.  
8 We were even more worried -- that was  
9 with at least a list that was purportedly going to  
10 be delivered to us.  
11 We were even more worried over  
12 Thursday night and into Friday that now we just  
13 had a list of stuff that we had no idea whether it  
14 was worth what we just lent against it. So there  
15 was lots of discussion of whether there was  
16 adequate collateral or how -- actually, no one  
17 really talked about whether there was adequate  
18 collateral. It was just how much was the  
19 collateral worth.  
20 So there was that discussion, but not  
21 excess collateral per se.  
22 (Exhibit 391-B, document Bates stamped  
23 BCI-EX-S 136198 marked for identification,  
24 as of this date.)  
25 Q. Mr. King, I am handing you a document



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2 to relevant Barclays desks or we had marked them  
3 ourselves, or if we didn't know what it is, we had  
4 estimated it in some variety of ways.  
5 Q. Were some of the marks, marks that you  
6 had put on these assets earlier in the week, say  
7 back in Monday or Tuesday?  
8 A. Yeah. Unfortunately, the process  
9 lagged, you know, because it was always -- it was  
10 almost impossible to keep marks -- so for this  
11 balance sheet for example, for example, this would  
12 have had to have been produced based on data that  
13 we had provided to Gary over the weekend that  
14 would have been based on marks that we had put on  
15 the portfolio or -- marks that we had put into our  
16 spreadsheet on the 19th, some of which would have  
17 been based on marks that we had come up with at  
18 the beginning of the week.  
19 Q. So it is the accumulated marking by  
20 Barclays starting in the 15th all the way through  
21 that week?  
22 A. Yeah.  
23 Q. Is the set of marks you used?  
24 A. I think it is also -- rather than  
25 using Barclays, it is PMTG at that point. I'm not

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2 London day, but it is still as of the 22nd.  
3 I don't remember -- we were very, very  
4 heavily embroiled in the risk management of the  
5 assets that we had acquired by this Monday.  
6 Q. OK.  
7 A. So I don't remember whether this  
8 was -- some of the marks that PMTG was using may  
9 well have been updated on this Monday. Some of  
10 them may have been latest guess over the weekend.  
11 I think probably over the weekend, and  
12 then, in other words, they may have come -- some  
13 of them would have come from various stages during  
14 the course of the previous week.  
15 Q. I guess that was my question. I  
16 didn't mean to -- I am sorry.  
17 A. The 2.83 is -- what we would have done  
18 was put the value that we thought was on the  
19 portfolio of the 42.55, let's say, and then there  
20 was the sum of the BoNY marks, which was the  
21 45.18, and the 2.83 just drops out as the  
22 difference between the two.  
23 Q. While we are looking at that, what  
24 does the "Friday P&L approx." entry mean?  
25 A. There is always carry and yield on a

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2 sure the firm had espoused our position, so that  
3 was -- it was PMTG's latest estimate line by line,  
4 and then that was refined over a period of time.  
5 Q. And then so PMTG -- I didn't mean to  
6 ascribe a difference between PMTG and Barclays,  
7 but PMTG has been trying to put marks on these  
8 various securities dating back to the prior  
9 Monday, all the way to the 15th?  
10 A. Correct.  
11 Q. This 2.83 is the product of a series  
12 of marks created by that process that -- as of the  
13 22nd?  
14 MR. STERN: Objection to the form.  
15 Q. Let me rephrase that. Let me rephrase  
16 it.  
17 The marks that you used to come up  
18 with the 2.83 number were PMTG marks, as of the  
19 22nd --  
20 A. No, I don't know whether these are --  
21 no.  
22 Q. OK.  
23 A. This e-mail is as of the 22nd.  
24 Q. OK, I understand.  
25 A. I notice it is at the end of the

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2 portfolio. That would have been that. But I'm  
3 not sure -- that would have been what that is.  
4 Q. So other than that -- I think you have  
5 explained to me where you get the 2.83, but the  
6 marks that you used for PMTG were accumulated by  
7 PMTG from the period of the 15th through that  
8 weekend, the following weekend; is that right?  
9 MR. STERN: Objection to the form.  
10 You can answer.  
11 A. The -- there was a production line, if  
12 you like, of Barclays' desks, my people, me, Gary,  
13 that would have resulted in a steady evaluation of  
14 the best estimate at the mark, of what we thought  
15 would be an orderly liquidation mark or whatever  
16 mark we were being asked for at a particular time,  
17 to go into -- to go up to product control so that  
18 they could produce this.  
19 Q. And that process is what took place  
20 for the week of September 15?  
21 A. No.  
22 MR. STERN: Object to the form.  
23 A. No, that -- no. All that happened  
24 during the week of the 15th was that -- we  
25 didn't -- I don't remember seeing any acquisition

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balance sheets during the course of the week. All our desk did was try to ascertain the risk and the best guess of both a liquidation valuation and an orderly liquidation valuation during the course of that week.

Once the transaction had closed on the Monday, then there was a -- there was both the risk management process, which was my problem, and also a control process, which was product control's, and obviously we had to have an input to product control, which is where the 42.55 would have been the latest -- Gary is using our latest estimate of value -- you can see it hadn't been updated because it still had the cash on it, for example, of the 7 that wasn't received and so on.

Q. I didn't mean to suggest you were doing the acquisition balance sheet during the week. I just wanted to see when the -- the marks that you used were developed during that week; is that right?

MR. STERN: Objection to the form. Objection to the form. I don't know what the question is.

Q. You can answer.

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MR. STERN: The question is, is that right? What's the question?

Q. You can answer.

MR. STERN: Well, the question is, "I wanted to see when the marks that you used were developed during that week."

MR. HINE: Jack, if you have an objection to the form, just state it. Don't coach him.

MR. STERN: I am asking you what your question is.

Q. When the marks that you used -- let me restate it.

I didn't mean to suggest that you were working on the acquisition balance sheet, as I thought I might have confused you with my last question, during that week, the prior week, the 15th.

A. Right.

Q. But in developing this 2.83, the marks that PMTG used were the product of its accumulating knowledge about the marks from the 15th through the following weekend; is that right?

A. We would have -- depending on the

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product type -- some -- the 8 -- for example, of that 42.55, approximately 8 billion dollars was cash equities. That's incredibly easy to mark from an accounting point of view. There is an exchange, you type in the ticker for the equity and you get a price. Therefore, that process took one of my analysts approximately -- I think he had Nick Leyhane in London do it for him -- 20 minutes to mark 8 billion dollars in assets.

As a trading matter, it's useless because the -- but it is necessarily where a firm has to mark cash equities. Because there is an exchange. It says the price is 22 dollars for -- you know, Barclays stock is at 3.98. Therefore, you better mark all the Barclays stock at 3.98.

If you happen to be long a billion dollars of Barclays stock and you go out and sell it, you are never going to get 3.98, but the process is pretty easy from the point of view of providing an accounting number.

What we had to do over and above that -- so that could have been updated and may well have been updated on Saturday or Sunday. We would have actually had the Bloomberg ticker in a

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spreadsheet, so it would have kept updating it.

Other things are less easy. Other things are, you have to run a model. You have to take cash in and do all sorts of things to be able to determine what the price is. So there is a full range.

8 billion dollars worth of equities doesn't trade at where those marks are. A good example would be, we had cash equities where the amount of the cash equity that we owned represented 400 days of the historical trading volume. That means if we would have traded as much of that stock as trades every day for the last 400 days, we still couldn't get out of our position.

But still, the last mark, last penny of stock that traded was where we had to mark that position. It took us a year at that point to get out of those positions, and many of them therefore by construction every time we sold them took a loss every time. 300 million dollars of loss or whatever it was in the end, but every time we sold we were selling at a discount to the published mark. Easy to provide, put the published mark

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into that spreadsheet.

The desk estimates were an attempt to then say, we have taken that, you know, where the exchange, such and such, and we assume it is going to cost us an additional 300 million dollars to bid side for us to be able to sell them. So we would have deducted that from that price, and that would have gone into the 42.55.

Now, many times we were just wrong, because the market was also deteriorating as we went along. So it was going to end up costing us an awful lot more to actually sell the stuff.

Not only did we have that problem, over the subsequent days we realized the 7 billion dollars wasn't going to turn up 7 billion dollars. We were going to get another slew of securities as well, many of which were securities that were on the excluded asset list that we didn't think were worth anything.

So the problem was just getting -- but that's the reason why -- some aspects of providing that 42.55 could have been done on an ongoing basis and others -- but would still have been subject to a -- you know, an observable exchange

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traded mark minus an estimate, and then others would have been things that would have really taken models or input from other desks to come up with.

Q. OK. If you see further down on the spreadsheet, it says, "Previously excluded 50 percent MBS." Do you see that?

A. Yeah.

Q. That's mortgage-backed securities?

A. Is that a zero?

MR. STERN: The question is what MBS means.

A. Is that what --

Q. Yes.

A. MBS means mortgage-backed securities.

Q. If you look at footnote 3 on that line, it says, "September 20 clarification letter indicates we no longer receive these assets." Do you see that?

A. Yes.

Q. Do you have any understanding of what the September 20 clarification letter does?

MR. STERN: Objection to form.

Q. With respect to mortgage-backed

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securities?

A. No.

Q. OK. Did, in fact -- I know we have talked about earlier some of the mortgage-backed securities made their way into the 32 point -- 32 billion dollar pool we talked about earlier and 10 billion dollar pool from the repo. Do you recall that testimony?

A. Can you say that again.

Q. I'm just trying to get you back to the testimony, but we had previously talked about some of the mortgage-backed securities ended up in the pool of assets that Barclays received as a result of the repo, correct?

A. Yes.

Q. And we compared that to the original number of 6.6 billion in mortgage-related securities. Do you recall that?

A. Yes.

Q. How many mortgage -- did Barclays ultimately get the entirety of the 6.6 mortgage-backed securities? And I'm not talking about -- I'm not trying to confuse you with the valuation, but I'm just talking about the pool we

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originally were talking about --

A. I understand. No.

Q. Did Barclays get all that?

A. No.

Q. Do you know how much Barclays did get?

A. Eventually -- like by the end of the year? Or by --

Q. Yeah.

A. Because we got -- we got some -- we didn't get all of it. We weren't even supposed to get all of it for this thing. We got some of it in the Fed facility that we -- the 30-odd billion dollars of Fed facility assets that we thought we were going to get.

Q. Right.

A. We got some of it in the 10 billion dollars that we didn't think we were going to get, and got some of it as part of the JP settlement in lieu of the 7 billion dollars, and then some of it we never got.

Q. Have you liquidated those securities yet?

A. Some of them.

Q. Most of them or a small portion of

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2 them?

3 A. Of what we are calling the  
4 mortgage-backed securities?

5 Q. Yes, the entire pool of  
6 mortgage-backed securities that Barclays received,  
7 no matter how you got it, from Lehman.

8 MR. STERN: Objection to --

9 Q. Can you give me an estimate of the  
10 percentage of it that you have liquidated by now?

11 MR. STERN: Objection to the form.

12 A. We had about 4 point -- we only -- we  
13 estimated that the 6.5 billion was only worth at  
14 most about 3 point something billion, so -- and in  
15 the Lehman -- in the repo that we thought we were  
16 going to get, I think we thought that was about  
17 1.5, even though JP had it at about 3.3.

18 And some of those are very obvious  
19 mistakes as well. Because JP doesn't know any  
20 more than we do what some of the securities are.  
21 Sometimes it says, if I don't know what it is,  
22 mark it at par, but it may actually be worth zero,  
23 and that's the reason why that number comes out so  
24 wrong, because these are so complicated  
25 securities.

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2 Q. OK.

3 A. So they are worth a tremendous amount  
4 less.

5 If you mean of those securities, that  
6 value, I think it was about -- we thought it was  
7 worth about 2 billion dollars or so. What we  
8 eventually ended up with, 2.2 I think, and we must  
9 have sold about -- the last time I was involved  
10 with it, it would have been about 60 percent, I  
11 think, or so.

12 Q. Do you know if Barclays made money on  
13 those securities, the mortgage-backed securities?

14 A. We lost money.

15 Q. Do you know how much or --

16 A. I don't remember.

17 Q. Do you know if there has been any kind  
18 of assessment of how much money Barclays made or  
19 lost with respect to the mortgage-backed  
20 securities that it received from Lehman?

21 A. No, never tried.

22 Q. For the same reasons we talked about  
23 before, it would be difficult to do?

24 A. No. It would actually be easy to do,  
25 just not useful. We had our own portfolio of

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2 mortgage-backed securities that were also losing  
3 money, so we just put them in with those, and  
4 therefore, I didn't track -- even though I could,  
5 I didn't track what was a Lehman security versus  
6 what was a Barclays security. We just organized  
7 them for appropriate liquidation or retention.

8 MR. HINE: OK, Mr. King, that is all  
9 the questions I have. I think one of my  
10 colleagues has some questions to ask you as  
11 well.

12 (Recess)

13 EXAMINATION BY

14 MR. OXFORD:

15 Q. Good afternoon, Mr. King. I  
16 introduced myself earlier on. My name is Neil  
17 Oxford. I represent the SIPA trustee for LBI.

18 Following up on the examination by  
19 Mr. Hine, initially you testified about the  
20 portion of the 6.5 billion of mortgage-backed  
21 securities that Barclays ended up purchasing.  
22 Do you recall that?

23 A. Yeah, yeah.

24 MR. STERN: Wait a second.

25 OK, OK.

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2 Q. I just want to make sure I understand  
3 your testimony. So leaving aside for the moment  
4 the question of value, are you able to estimate  
5 what percentage of that 6.5 billion of  
6 mortgage-backed securities that we have been  
7 discussing that is represented on Exhibit 388-B,  
8 are you able to estimate what percentage of those  
9 mortgage-backed securities ended up in the hands  
10 of Barclays?

11 MR. STERN: Objection to the form.  
12 Get out 388-B. And let's hear the question  
13 again.

14 MR. OXFORD: Can you read it back.  
15 (Record read)

16 A. Not accurately, and the reason for  
17 that is that we got the ultimate delivery of  
18 securities that Barclays received, first the  
19 subset of the ones that it expected to receive in  
20 the original repo, the ones that it got in the 10  
21 billion dollars of repo that it didn't expect to  
22 receive and the ones that it got as part of the  
23 settlement against the 7 billion dollars of cash.  
24 We actually received a lot of securities that we  
25 had -- that would have fallen into that category

1  
2 UNITED STATES BANKRUPTCY COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x  
In Re: Chapter 11  
5 LEHMAN BROTHERS Case No. 08-13555 (JMP)  
HOLDINGS, INC., et al., (Jointly Administered)  
6 -----)

7  
8 \* \* \* HIGHLY CONFIDENTIAL \* \* \*

9 DEPOSITION OF GARY ROMAIN  
10 New York, New York  
11 Thursday, September 10, 2009  
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17  
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20 Reported by:  
FRANCIS X. FREDERICK, CSR, RPR, RMR  
21 JOB NO. 24298  
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<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 are broadly three areas in which you are the</p> <p>3 30(b)(6) witness. One is to do with the OCC</p> <p>4 margin and values. The other has to do with</p> <p>5 what we refer to as Schedule A and Schedule B</p> <p>6 on the Asset Purchase Agreement, correct?</p> <p>7 A. Yeah.</p> <p>8 Q. And a third category were certain</p> <p>9 documents or spreadsheets that were prepared</p> <p>10 for Barclays auditors, right?</p> <p>11 A. Sure.</p> <p>12 Q. On the Schedule A, Schedule B</p> <p>13 issues who did you speak with to get ready for</p> <p>14 your 30(b)(6) deposition?</p> <p>15 A. The most significant conversations</p> <p>16 I had in preparation were with -- let me go</p> <p>17 through it -- with Sean Teague. With Stephen</p> <p>18 Callick. With Jerry Shi. With Lee Howell.</p> <p>19 With Ian Cooper.</p> <p>20 MR. SHAW: Let me just ask to</p> <p>21 clarify the question. Mr. Tambe's</p> <p>22 question involves specifically the</p> <p>23 subject of the Schedule A and Schedule</p> <p>24 B. Were your conversations you</p> <p>25 described on that subject or on other</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 subjects?</p> <p>3 THE WITNESS: In terms of just the</p> <p>4 Schedule A and Schedule B that would be</p> <p>5 the -- discussion I've had on Schedule A</p> <p>6 and Schedule B. I have to give this</p> <p>7 some thought.</p> <p>8 (Pause on the record.)</p> <p>9 A. Actually, those five. Schedule A</p> <p>10 and Schedule B would be just Sean Teague. The</p> <p>11 other four would relate to the third item, the</p> <p>12 OCC.</p> <p>13 Q. And on the auditor spreadsheets</p> <p>14 who did you speak to if anyone to get ready to</p> <p>15 testify on those topics?</p> <p>16 A. The auditor spreadsheets I didn't</p> <p>17 speak to anybody in particular because the --</p> <p>18 the two documents -- the two main documents,</p> <p>19 one of which was put together by myself so</p> <p>20 very little refreshing of memory was required.</p> <p>21 The other one I worked with</p> <p>22 consistently over the period. So, again, very</p> <p>23 little refreshing of my memory was required.</p> <p>24 Q. Did you read any deposition</p> <p>25 testimony that's been given in this matter to</p>
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<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 get ready for your deposition?</p> <p>3 A. I read the deposition testimony of</p> <p>4 Patrick Clackson.</p> <p>5 Q. And did you speak with Mr.</p> <p>6 Clackson about his deposition testimony?</p> <p>7 A. No.</p> <p>8 Q. Did you speak with anyone else</p> <p>9 about Mr. Clackson's deposition testimony</p> <p>10 other than counsel?</p> <p>11 A. No.</p> <p>12 Q. You're currently employed by</p> <p>13 Barclays, correct?</p> <p>14 A. That's correct.</p> <p>15 Q. And in what position?</p> <p>16 A. I'm head of technical accounting</p> <p>17 and private equity finance for Barclays</p> <p>18 Capital.</p> <p>19 Q. And how long have you been at</p> <p>20 Barclays?</p> <p>21 A. Just over five years.</p> <p>22 Q. And before that where were you?</p> <p>23 A. I was at Deloitte for nine years</p> <p>24 prior to that.</p> <p>25 Q. And do you hold any professional</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 certifications from any accounting bodies</p> <p>3 anywhere in the world?</p> <p>4 A. I'm an ICA so the English and</p> <p>5 Welsh Institutional Chartered Accountant.</p> <p>6 Q. Last September 2008, did you have</p> <p>7 the same position that you have now?</p> <p>8 A. I did, yes.</p> <p>9 Q. Describe generally for me in the</p> <p>10 time period of, say, August, through December</p> <p>11 of 2008, broadly, what role you played in</p> <p>12 connection with the Lehman acquisition.</p> <p>13 A. Sure.</p> <p>14 Q. So starting in August.</p> <p>15 A. Yeah. In August I was involved in</p> <p>16 an exercise placed on the published financial</p> <p>17 information for Lehman to try to come up with</p> <p>18 a picture of what the accounts of combined</p> <p>19 Barclays and Lehman might look like. Barclays</p> <p>20 and Lehman use different sets of accounting</p> <p>21 rules so the primary purpose of my involvement</p> <p>22 was to try to eliminate those differences. I</p> <p>23 was then involved -- well, let's give a time</p> <p>24 line. So Friday the 13th of September --</p> <p>25 Q. It's the 12th of September.</p>

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A. Friday, the 12th of September. I became aware that some people were heading over to New York in relation to a potential deal with Lehman. I was called onto a conference call in the early hours of Saturday the 13th of September with Marie Stewart who was my equivalent at Lehman, Lehman Brothers. So the head of their technical accounting department. Really to try to augment my understanding. Because obviously during August we only had access to published financial information. So to augment my understanding by talking to somebody who had a greater understanding of their accounting policies and how they feed into their financial statements.

I then flew to New York on the afternoon of Saturday, the 13th. When I arrived it would have been early evening and I was advised that the deal which was being considered was no longer proceeding. A few hours later I was called into the office by Patrick Clackson. He had a few questions in relation to a deal which may be resurrected at

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that time. I didn't have any details of the transaction that we were looking at but he had a couple of accounting questions which I answered for him.

The next time that I had involvement was -- it would have been mid-morning on Monday, the 15th, when I and a number of others headed across to the Lehman headquarters at -- on Seventh Avenue with the understanding that there was a deal which was now being pursued. And I spent the next 24 to 30 hours I guess over there. I can't remember exactly when I left but it would have been probably early afternoon Tuesday. During that period I was providing support to -- well, to Patrick Clackson and through him to a number of individuals were involved in the negotiations at that time. That assistance was -- some of it was administrative, just pulling together documents, copying them, and providing them to them. Other was liaising with a number of Lehman staff to try to get a number of information that they were asking -- Barclays executives were asking for.

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Q. Let me stop you there.

A. Sure.

Q. So you're on the Monday/Tuesday of the week of the bankruptcy.

A. That's right.

Q. You've described some of the support you were providing Mr. Clackson and others those two days.

Is it fair that on that Monday/Tuesday you were not involved in negotiating any aspect of the transaction?

A. That's correct. I wasn't involved in any of the negotiations.

Q. Were you doing any valuation exercises of Lehman's assets on the Monday/Tuesday?

A. No, I was not.

Q. Were you aware that there were valuation discussions taking place between Barclays and Lehman on that Monday/Tuesday?

A. I was aware that valuation was an element of the conversations which were going on. But I wasn't involved in discussions themselves.

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Q. What if anything do you recall about the nature of the valuation discussions that you understood were taking place?

A. I don't really have any understanding of the nature.

Q. All right. So let's carry on back with the time line. You were talking about Monday/Tuesday. Carry on.

A. Sure. So from that period onwards the main task which was given to me was to look towards our accounting treatment and eventual disclosure of the transaction. So over the next period of -- well, from then right through till shortly before our financial statements were published in February I had and maintained the acquisition balance sheets which was -- until just before it was published was in the form of an Excel spreadsheet which was summarizing the balance sheet which needs to be disclosed in our financial statements in the 6-K. That was a working document through that period of the time line.

Q. Okay. On that Monday/Tuesday of

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2 that week, the week of the 15th, were you  
3 involved in reviewing or preparing any  
4 materials for the board of directors of  
5 Barclays?  
6 A. I was not involved in reviewing or  
7 preparing any.  
8 Q. Okay. Did you -- okay.  
9 We're just going to pull an  
10 exhibit and I'll discuss that with you.  
11 A. Sure.  
12 (Pause on the record.)  
13 Q. Sir, I've placed before you a  
14 document that's previously marked as  
15 Exhibit 377A.  
16 A. Um-hum.  
17 Q. It has the Bates numbers  
18 BCI-EX-115843 through -846.  
19 A. Um-hum.  
20 Q. Is that the final Excel version of  
21 the acquisition balance sheet, sir?  
22 A. Yes. That's correct. It's --  
23 sheets 844 and 845 are the final Excel --  
24 well, 845, 845 and 846 are the final Excel  
25 versions of the acquisition balance sheet.

Page 20

Page 21

1 G. ROMAIN - HIGHLY CONFIDENTIAL  
2 Q. And as you sit here, are you aware  
3 of any adjustments or changes you expect to  
4 make on the one-year anniversary?  
5 A. We don't expect to make any  
6 changes.  
7 Q. And we'll come back to 377A later  
8 in the examination.  
9 A. Sure.  
10 (Deposition Exhibit 388A, document  
11 bearing production number  
12 BCI-EX-(S)-000520127 with attachment,  
13 marked for identification as of this  
14 date.)  
15 BY MR. TAMBE:  
16 Q. Sir, I've placed before you a  
17 document marked as 388A. It's a cover e-mail  
18 and what looks like a Powerpoint document  
19 attached to it. Please take a moment to  
20 review it and let me know when you're done and  
21 I'll ask you some questions.  
22 (Document review.)  
23 Q. Sir, have you had a chance to  
24 review it, sir?  
25 A. I have, yes.

1 G. ROMAIN - HIGHLY CONFIDENTIAL  
2 843 was and is the same information which is  
3 put into a form appropriate for disclosure  
4 because Barclays' balance sheet have a  
5 prescribed format and the items in the  
6 acquisition balance sheet needed to be  
7 appropriately allocated amongst those balance  
8 sheet categories for disclosure.  
9 Q. And so the acquisition balance  
10 sheet, the Excel version, the -44, -45 and  
11 -46, that's the document you were describing  
12 before which was an evolving document which  
13 finally rolled up to the disclosure document  
14 which is the first page of the exhibit; is  
15 that fair?  
16 A. It's fair. To expand, when you  
17 say final, it was final in that it was the  
18 version which was disclosed in our 2008  
19 financial statements. Under the regulatory  
20 accounting standards you have until twelve  
21 months after the acquisition to finalize your  
22 initial accounting for an acquisition. That  
23 anniversary hasn't quite passed yet and,  
24 therefore, this is not final until we declare  
25 our accounting disclosed.

1 G. ROMAIN - HIGHLY CONFIDENTIAL  
2 Q. Okay. And you'll see the cover  
3 e-mail is an e-mail from Marie Stewart and you  
4 referred to her earlier, correct?  
5 A. That's right.  
6 Q. She was your counterpart at  
7 Lehman.  
8 A. That's correct.  
9 Q. And this is a cover e-mail  
10 addressed to you and looks like others at  
11 Barclays; is that correct?  
12 A. Yes. That's correct.  
13 Q. Who's Chris Weidler and Charles  
14 Utley?  
15 A. Chris Weidler, he works in finance  
16 based in London. His title is head of  
17 financial reporting. European head of  
18 financial reporting. Charles Utley is the US  
19 regional head of technical accounting based in  
20 New York.  
21 Q. And the document that's attached  
22 to this e-mail from Marie Stewart to you, was  
23 that a document you had requested that she  
24 provide you?  
25 A. I don't recall receiving this

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<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 document. I do recall Marie Stewart sending a</p> <p>3 number of documents to me during the process</p> <p>4 from Saturday on for the next couple weeks. I</p> <p>5 don't recall requesting or subsequently using</p> <p>6 this document.</p> <p>7 Q. And having skimmed through the</p> <p>8 document, do you have an understanding of what</p> <p>9 the document is?</p> <p>10 A. I have an understanding that it</p> <p>11 is -- it is the sum -- it's the summary of</p> <p>12 some exercise to fair value elements of the</p> <p>13 Lehman Brothers business. That's what it</p> <p>14 seems to be.</p> <p>15 Q. The e-mail from Marie Stewart is</p> <p>16 dated the 13th of September. The Saturday,</p> <p>17 correct?</p> <p>18 A. Yeah.</p> <p>19 Q. And that's the day you flew over</p> <p>20 from London to New York to join your</p> <p>21 colleagues here.</p> <p>22 A. Yeah.</p> <p>23 Q. The transaction that was being</p> <p>24 contemplated over that weekend, was that an</p> <p>25 acquisition of the entirety of Lehman's</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 business?</p> <p>3 A. The transaction that -- my</p> <p>4 understanding of the transaction which I was</p> <p>5 informed had not been proceeded with when I</p> <p>6 left on Saturday was an acquisition of the</p> <p>7 Lehman business. That was my understanding.</p> <p>8 But I wasn't involved in those discussions so</p> <p>9 it's only an understanding.</p> <p>10 Q. And was it your understanding --</p> <p>11 do you have an understanding what this e-mail</p> <p>12 from Marie Stewart to you was in connection</p> <p>13 with that contemplated transaction?</p> <p>14 A. No, I don't.</p> <p>15 Q. Do you recall using the attachment</p> <p>16 to that e-mail for any purpose?</p> <p>17 A. No.</p> <p>18 (Deposition Exhibit 389A, document</p> <p>19 bearing production number</p> <p>20 BCI-EX-(S)-00052084, marked for</p> <p>21 identification as of this date.)</p> <p>22 BY MR. TAMBE:</p> <p>23 Q. Sir, I've placed before you a</p> <p>24 one-page document marked Exhibit 389A. Take a</p> <p>25 moment to review it and let me know when</p>
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<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 you're done.</p> <p>3 A. Sure. Yeah.</p> <p>4 Q. You'll recognize this as an e-mail</p> <p>5 from Mr. Clackson to you and many other folks</p> <p>6 at Barclays.</p> <p>7 Do you see that?</p> <p>8 A. Yeah.</p> <p>9 Q. Is Mr. Clackson someone you report</p> <p>10 to directly?</p> <p>11 A. No, I report -- well, are you</p> <p>12 asking now or at that time?</p> <p>13 Q. Let's ask back then.</p> <p>14 A. Back then I was reporting to Hugh</p> <p>15 Shields who reported to Patrick Clackson.</p> <p>16 Q. And now?</p> <p>17 A. And now I report to Mark Merson</p> <p>18 who reports to Patrick Clackson.</p> <p>19 Q. You'll see in Mr. Clackson's</p> <p>20 e-mail, the second paragraph states, "We</p> <p>21 nearly got there and the value created by the</p> <p>22 deal would have been an incredible</p> <p>23 \$25 billion."</p> <p>24 Do you see that?</p> <p>25 A. I do, yeah.</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Did you have any discussions with</p> <p>3 anyone over that weekend about the value of</p> <p>4 Lehman transaction, the deal that was being</p> <p>5 contemplated?</p> <p>6 A. No, I didn't.</p> <p>7 Q. And just in orders of magnitude</p> <p>8 the value of \$25 billion, do you have any idea</p> <p>9 how that compares to the value of the Lehman</p> <p>10 operations that were contemplated being</p> <p>11 acquired that weekend?</p> <p>12 A. No, I don't know.</p> <p>13 Q. You told us that on Monday, the</p> <p>14 15th, you learned that a potential transaction</p> <p>15 with Lehman possibly was back in</p> <p>16 consideration, correct?</p> <p>17 A. That's correct.</p> <p>18 Q. And who did you hear that from?</p> <p>19 A. I heard that from James Walker who</p> <p>20 was the CFO of the Americas at the time.</p> <p>21 Q. At Barclays.</p> <p>22 A. At Barclays Capital.</p> <p>23 Q. And what were you told about the</p> <p>24 nature of the contemplated transaction on</p> <p>25 Monday, the 15th?</p>

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2 A. At that time very little. I was  
3 essentially providing support to a group of  
4 people that were negotiating to make a deal.  
5 But I wasn't involved in the negotiation of  
6 the deal directly. So my involvement was much  
7 more limited to the information I was  
8 providing at that time.

9 Q. Was it your understanding either  
10 on Monday or in the subsequent days that the  
11 transaction that was being contemplated was a  
12 purchase of select assets from Lehman  
13 Brothers?

14 A. Yes.

15 Q. Did you have an understanding as  
16 to whether Barclays was negotiating the value  
17 at which it would be purchasing those assets  
18 from Lehman Brothers?

19 A. I didn't have an understanding of  
20 the negotiations as involves those terms, no.

21 Q. At any time, has it been your  
22 understanding that Barclays purchased assets  
23 from Lehman at a value other than the book  
24 value at which those assets were being carried  
25 by Lehman?

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2 A. Sorry. I'm not sure I understand  
3 the question.

4 Q. Lehman had a series of assets that  
5 it carried at some value on its books,  
6 correct?

7 A. Yeah.

8 Q. Is it your understanding -- has it  
9 ever been your understanding, that Barclays  
10 purchased some selection of those assets at  
11 values other than the book values at which  
12 Lehman carried those assets?

13 A. I didn't have an understanding of  
14 a transaction whereby we were purchasing  
15 certain assets at a particular value. I had  
16 an understanding of the assets that were being  
17 purchased which grew over time and I have an  
18 understanding of the amount of consideration  
19 which was being paid as being elements of the  
20 deal. But in terms of the relationship  
21 between the two, I wasn't involved in the  
22 discussions as to how those terms were arrived  
23 at.

24 Q. In connection with the Lehman  
25 transaction, did anyone ever use the phrase

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2 "block discount"?

3 A. I don't recall anybody using the  
4 phrase.

5 (Deposition Exhibit 390A, document  
6 bearing production numbers  
7 BCI-EX-(S)-00023761 through  
8 BCI-EX-(S)-00023762 with attachment,  
9 marked for identification as of this  
10 date.)

11 BY MR. TAMBE:

12 Q. Sir, I've placed before you a  
13 multi-page document marked Exhibit 390A. Take  
14 a moment to review the document. It's a cover  
15 e-mail, a placeholder sheet, and then a small  
16 spreadsheet. Let me know when you're done.

17 (Document review.)

18 A. Okay, yeah.

19 Q. All right. The cover e-mail, at  
20 least the e-mail address block states it's  
21 from Tom McCosker to several people at  
22 Barclays but you recognize this as an e-mail  
23 that you sent, correct?

24 A. That's right.

25 Q. You were sending it from Tom's

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2 e-mail box.

3 A. Absolutely.

4 Q. The spreadsheet that's attached to  
5 the cover e-mail, could you tell us what that  
6 is?

7 A. Well, that is -- that was a very  
8 preliminary summary of assets and liabilities  
9 which was put together into a balance sheet  
10 format and I was asked to send to the people  
11 in the "to" box there.

12 At the time I sent the e-mail I  
13 was at the -- I was on the 31st floor of 745  
14 providing support to Patrick and the  
15 negotiators. I was provided with these  
16 numbers as being numbers to put into that  
17 format and sent.

18 Q. In your cover e-mail you'll see a  
19 reference to the PC used was installed with an  
20 updated version of Excel.

21 Do you see that?

22 A. Yeah.

23 Q. Was that a Lehman PC that you were  
24 using to create this?

25 A. No. It was a Barclays laptop that



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<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 we'd taken across.</p> <p>3 Q. On your acquisition summary, the</p> <p>4 third page of the exhibit, the calculation</p> <p>5 there begins with the line item that states</p> <p>6 Inventory Carrying Amount.</p> <p>7 Do you see that? 64 billion?</p> <p>8 A. I do, yes.</p> <p>9 Q. Where did that number and the</p> <p>10 other numbers on the sheet come from?</p> <p>11 A. I don't recall who provided them</p> <p>12 to me. At that stage I wouldn't have been</p> <p>13 involved in any of the underlying work so I</p> <p>14 was provided with those numbers to send and at</p> <p>15 that time, the 16th of September, would have</p> <p>16 obviously been very preliminary numbers.</p> <p>17 Q. And the next line item on that</p> <p>18 page, the third page of 390A, is Inventory</p> <p>19 Valuation Adjustment.</p> <p>20 Do you see that?</p> <p>21 And that's a negative \$3.5 billion</p> <p>22 number.</p> <p>23 A. Yeah.</p> <p>24 Q. Right. Do you know what that's a</p> <p>25 reference to?</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 A. I don't, no.</p> <p>3 Q. If you look on your cover e-mail</p> <p>4 that you sent you refer to that \$3.5 billion</p> <p>5 adjustment as a writedown.</p> <p>6 Do you see that?</p> <p>7 A. I do, yeah.</p> <p>8 Q. Was it your understanding that the</p> <p>9 carrying value of these assets was being</p> <p>10 written down by Barclays in calculating this</p> <p>11 acquisition summary?</p> <p>12 A. At that time I didn't have enough</p> <p>13 information to have a real sense.</p> <p>14 Q. You had on the liability section a</p> <p>15 bonus accrual item of 1.3 billion.</p> <p>16 Do you see that?</p> <p>17 A. Yeah.</p> <p>18 Q. And, again, do you know the source</p> <p>19 of that number?</p> <p>20 A. I don't, no.</p> <p>21 Q. I'm sorry if I've already asked</p> <p>22 you this. Who was providing you with these</p> <p>23 numbers?</p> <p>24 A. I don't recall who provided me</p> <p>25 with those numbers precisely. It would have</p>
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<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 been somebody that was involved in the process</p> <p>3 but I couldn't pinpoint to it an individual.</p> <p>4 Q. And, again, I'm just trying to</p> <p>5 understand the exercise that was going on when</p> <p>6 this sheet was prepared.</p> <p>7 A. Sure.</p> <p>8 Q. You had an Excel spreadsheet</p> <p>9 opened and someone was giving you assets and</p> <p>10 liabilities to put into a balance sheet, a</p> <p>11 rudimentary balance sheet; is that right?</p> <p>12 A. That's correct.</p> <p>13 Q. Sir, I've handed you a document</p> <p>14 that was previously marked as Exhibit 378.</p> <p>15 It's a covering e-mail, a placeholder sheet,</p> <p>16 and then a Powerpoint presentation. Take a</p> <p>17 moment to review the document and please let</p> <p>18 me know when you're done.</p> <p>19 (Document review.)</p> <p>20 A. Okay.</p> <p>21 Q. The attachment to the cover</p> <p>22 e-mail, the Powerpoint document, have you seen</p> <p>23 that document before today, sir?</p> <p>24 A. I've seen it in preparation for</p> <p>25 the deposition. If it's -- or if not this</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 one, something which looks very similar to it.</p> <p>3 Q. Just keep that document in front</p> <p>4 of you. I'm marking another exhibit.</p> <p>5 A. Um-hum.</p> <p>6 (Deposition Exhibit 391A, document</p> <p>7 bearing production numbers</p> <p>8 BCI-EX-001766522 through</p> <p>9 BCI-EX-001766536, marked for</p> <p>10 identification as of this date.)</p> <p>11 BY MR. TAMBE:</p> <p>12 Q. Sir, I've had placed before you a</p> <p>13 document marked 391A. Please take a look at</p> <p>14 it. It's also a Powerpoint presentation with</p> <p>15 a similar title to Exhibit 378.</p> <p>16 Is that the document you reviewed</p> <p>17 in preparation for the deposition?</p> <p>18 MR. SHAW: I note that there</p> <p>19 appear to be multiple documents here.</p> <p>20 A. Are these identical?</p> <p>21 Oh, no. This one has some</p> <p>22 scribbles on it.</p> <p>23 They look very, very similar so</p> <p>24 I'm not sure.</p> <p>25 Q. And just as a housekeeping matter,</p>

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2 the last three pages of the exhibit, I think  
3 we can just extract. It's a different form of  
4 document. It look like a memo.  
5 A. Oh, okay.  
6 Q. You can just pull those right off.  
7 A. Sure.  
8 Q. So the exhibit will just be the  
9 Powerpoint presentation.  
10 A. Okay.  
11 Q. So looking at the Powerpoint  
12 presentation it appears to be on a quick  
13 summary similar to the document that's  
14 attached to Exhibit 378 except for some  
15 handwritten scribbles; is that right?  
16 A. It appears to be, yes.  
17 Q. Are those your handwritten  
18 scribbles there?  
19 A. No. That's not my handwriting.  
20 MR. TAMBE: I could ask counsel.  
21 We received this collection of documents  
22 I believe yesterday. Is that right,  
23 Terry?  
24 MR. McMAHON: Right.  
25 MR. TAMBE: Whose files did these

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2 for.  
3 Q. If you look at that column that  
4 states New Transaction Included Gross, do you  
5 see that column?  
6 A. I do, yes.  
7 Q. That column totaled up to  
8 75.3 billion?  
9 Do you see that?  
10 A. I do, yeah.  
11 Q. And the heading on this Powerpoint  
12 page states total assets and new transaction  
13 are 75 billion.  
14 Do you see that?  
15 A. I do.  
16 Q. Any understanding as to where that  
17 number comes from, the \$75 billion number?  
18 A. No, I don't. There were multiple  
19 spreadsheets circulating around that time as  
20 the nature of the deal and information changed  
21 around that time and subsequently. So I  
22 wouldn't know -- I wouldn't know what set of  
23 numbers these were drawn from. But given the  
24 date they would certainly have been very  
25 preliminary numbers.

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2 documents come from?  
3 MR. SHAW: If it's what I think it  
4 is, then this was from a collection of  
5 hard copy documents that Mr. Romain had.  
6 MR. TAMBE: Okay.  
7 BY MR. TAMBE:  
8 Q. Is that fair, Mr. Romain? Was  
9 that a collection of hard copy documents that  
10 you turned over to your counsel?  
11 A. Yes, that's true.  
12 Q. And it's possible that in that  
13 collection of hard copy documents were  
14 documents with other people's handwriting on  
15 them?  
16 A. Yes.  
17 Q. And you wouldn't know whose  
18 handwriting this is on Exhibit 391A; is that  
19 fair?  
20 A. No, no.  
21 Q. Do you understand the nature of  
22 the handwriting? I believe you're looking at  
23 page 5 of the Powerpoint.  
24 A. I'm looking at page 5. No, I'm  
25 not aware of what the amendments were there

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2 Q. And looking at this exhibit,  
3 Exhibit 391A, if you turn to the second page  
4 of the exhibit -- yeah, that's the one.  
5 It states Project Long Island  
6 Board Discussion Materials.  
7 Do you see that?  
8 A. I do.  
9 Q. And do you understand these were  
10 materials prepared for discussion at a board  
11 of directors meeting at Barclays?  
12 A. I don't know that.  
13 Q. Well, if you turn to the next  
14 page, page 2 of the presentation, the very  
15 last point on that page states, "We are  
16 seeking board approval for the transaction and  
17 to issue 612 million Barclay shares."  
18 Do you see that?  
19 A. I do.  
20 Q. Does that help your understanding  
21 that this was prepared for the board of  
22 directors meeting for Barclays?  
23 A. I don't know that.  
24 Q. Did the \$75 billion number we were  
25 talking about a few minutes ago, are you aware

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2 of any other description of the assets to be  
3 purchased being provided to the board of  
4 directors on or around the 16th of September?

5 A. I wasn't involved in the provision  
6 of materials to the board.

7 (Deposition Exhibit 392A, document  
8 bearing production numbers  
9 BCI-EX-(S)-00023813 through  
10 BCI-EX-(S)-0023814, marked for  
11 identification as of this date.)

12 BY MR. TAMBE:

13 Q. Sir, I've handed you a two-page  
14 document marked 392A. It's an e-mail chain.  
15 Take a moment to review it and let me know  
16 when you're done.

17 (Document review.)

18 A. Okay.

19 Q. You'll see the cover e-mail, the  
20 first e-mail at the top of the page, the first  
21 page of Exhibit 392A, is someone from called  
22 Vivek Syal?

23 A. Um-hum.

24 Q. To you and then c.c.'d to others.  
25 Do you see that?

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2 A. Yes.

3 Q. Who is Vivek Syal?

4 A. He works for Barclays Capital but  
5 are you asking for what role he would have  
6 been performing at that time?

7 Q. If you know, yeah.

8 A. I can't recall the exact title.  
9 He was -- he was a member -- a function which  
10 I would describe as similar to investor  
11 relations, but Barclays Capital rather than  
12 Barclays Group.

13 Q. And you'll see that Vivek is  
14 forwarding you an e-mail which has a  
15 calculation in it.

16 Do you see that?

17 A. Yes.

18 Q. And the e-mail that's being  
19 forwarded to you, and you were a c.c. on that  
20 original e-mail as well, begins with the  
21 following phrase: "Following the numerous  
22 e-mails on people trying to reconcile the  
23 75.3 billion pound in the board dec and in  
24 particular wanting to understand the  
25 19.9 billion in the board dec..." and then it

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2 goes on.

3 Do you recall on or about the 16th  
4 being involved in any discussions about  
5 reconciling numbers in the board dec?

6 A. I recall this e-mail, certainly.

7 Q. Okay. So what do you recall about  
8 this e-mail?

9 A. I recall that Bill was trying to  
10 reconcile a set of numbers he had and we had a  
11 conversation. I don't recall the entire  
12 content of that conversation. But essentially  
13 during that period the numbers -- people's  
14 understanding of the numbers on the 16th and  
15 subsequent to that, was changing over time.  
16 And I was trying to help Bill to track down  
17 where the number that he was referring to may  
18 have come from.

19 In terms of the source of the  
20 information which is included here, I don't  
21 know where -- I don't know where those numbers  
22 would have come from.

23 Q. And what you're referring to are  
24 the numbers in Bill Castell's e-mail, the  
25 asset and liability numbers, the other

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2 calculations, correct?

3 A. Precisely.

4 Q. Were you ever able to answer his  
5 question as to reconciling the 75.3 billion  
6 number?

7 A. I don't recall.

8 Q. Did you ever conclude that that  
9 was an incorrect number?

10 A. The numbers which were circulated  
11 for a variety of purposes between a number of  
12 people during that period were based on  
13 preliminary estimates and people's best  
14 understanding of numbers. So I wouldn't use  
15 the word incorrect. I would say that the  
16 numbers -- the appropriate numbers for the  
17 deal changed over time for a variety of  
18 reasons until we ended up with the numbers  
19 that were disclosed in our annual report.

20 Q. Were you involved at all in  
21 calculating any of the numbers that were  
22 disclosed to the Street in the analyst call  
23 that was held on the 17th of September?

24 A. I don't recall any direct  
25 involvement. I may have answered questions

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from people who were involved in that. But it would be difficult to say more than that.

Q. And certainly when Barclays was speaking to the Street on the 17th, Barclays would have made an effort to be accurate in its description of the transaction, correct?

A. Because I wasn't involved in the conversation, I think I probably -- I don't have a great understanding of what the form and requirements are for those type of announcements. So I wouldn't want to comment inaccurately.

Q. Okay. Well, I would expect accuracy to be one of the requirements, correct?

A. I would expect that -- I would expect faithful representation. Accuracy is a term which is difficult to find when -- based on provisional information.

Q. Do you have any understanding of the headings Gross and Net as they're used in that calculation that's provided by Mr. Castell to you and others?

A. No. I -- no, I don't know what

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those columns specifically represented, no.

Q. But if you just follow the math, it appears that on a line-by-line basis there is a gross number, there's a parenthetical which appears to be a deduction, and then a net number.

Do you see that?

A. I do.

Q. Okay. And this is all in the section titled FV Inventory.

A. Yes.

Q. And you recognize that as fair value inventory?

A. Yes.

Q. Do you have any understanding as to why, on or about the 16th of September, these adjustments were being made to the gross valuation numbers?

A. No, because I don't have a sense of what the gross column represents. I don't have a sense of what might be deducted or why.

Q. If you flip over to the next page, at the top of the page there's two lines. One line simply means minus and there's a negative

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1.5 number.

Do you see that?

A. I do.

Q. And then there's a little asterisk that states Unallocated Deduction. Not assigned to a specific asset class.

Do you see that?

A. Yeah.

Q. And, again, were you aware on or around the 16th of a roving unallocated deduction to fair value?

A. No.

Q. This calculation rolls up to a negative goodwill number of 3 -- I presume billion -- pretax.

Do you see that?

A. Yeah.

Q. What is negative goodwill?

A. Goodwill, positive or negative, is an accounting concept which is calculated as the difference between net assets acquired and consideration paid in an acquisition.

Q. So if you were going to calculate a gain on acquisition you would need to

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calculate the negative goodwill; is that correct?

A. If you were to put together the accounting for an acquisition you would calculate -- you would calculate goodwill, and depending on whether the goodwill is positive or negative, the treatment would differ. If goodwill is negative it would be included in the income statements as a profit.

(Deposition Exhibit 393A, document bearing production numbers BCI-EX-(S)-00052197 through BCI-EX-(S)-00052198, marked for identification as of this date.)

BY MR. TAMBE:

Q. Sir, just before we go on to the exhibit that's been placed before you I just want to make sure I understood your last answer.

A. Sure.

Q. I believe you said if goodwill is negative it would be included in the income statement as a profit; is that right?

A. For accounting purposes; that is

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<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 correct, yes.</p> <p>3 Q. All right.</p> <p>4 Sir, I've placed before you a</p> <p>5 two-page document marked 393A. It's a cover</p> <p>6 e-mail and a spreadsheet. Have you had a</p> <p>7 chance to review the document?</p> <p>8 A. I have, yes.</p> <p>9 Q. The attachment, do you have an</p> <p>10 understanding of what that attachment is?</p> <p>11 A. It's a schedule which I did see at</p> <p>12 the time which was produced by Lehman, I</p> <p>13 believe. Yeah.</p> <p>14 Q. If you'd have Exhibit 392A in</p> <p>15 front of you. If you turn to page 2 of</p> <p>16 Exhibit 392A, that's the calculation from Bill</p> <p>17 Castell that we were looking at a few minutes</p> <p>18 ago. That has a total asset number of 72.05.</p> <p>19 Do you see that?</p> <p>20 A. Yeah.</p> <p>21 Q. And the spreadsheet in</p> <p>22 Exhibit 393A has an Adj. total assets of</p> <p>23 72.65.</p> <p>24 Do you see that?</p> <p>25 A. I do.</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Do you have any understanding in</p> <p>3 Exhibit 393A what the nature of the adjustment</p> <p>4 is that's referred to in Adj. total assets?</p> <p>5 A. No, I don't.</p> <p>6 Q. And in Exhibit 393A which is the</p> <p>7 Lehman-prepared document you testified about,</p> <p>8 the Pure Payment and Comp Payment under</p> <p>9 Liabilities, did you have an understanding on</p> <p>10 the 16th what the source of those numbers was?</p> <p>11 A. No, I didn't.</p> <p>12 Q. As you sit here, do you know where</p> <p>13 those numbers came from on the 16th?</p> <p>14 A. No, I don't.</p> <p>15 Q. Was it your understanding that</p> <p>16 those numbers were inserted there to balance</p> <p>17 out this balance sheet?</p> <p>18 A. No. I don't have any</p> <p>19 understanding of the source of any of the</p> <p>20 numbers on the spreadsheet.</p> <p>21 (Deposition Exhibit 394A, document</p> <p>22 bearing production numbers</p> <p>23 BCI-EX-(S)-00052200 through</p> <p>24 BCI-EX-(S)-00052201, marked for</p> <p>25 identification as of this date.)</p>
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<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. TAMBE:</p> <p>3 Q. Sir, I've placed before you a</p> <p>4 two-page document marked Exhibit 394A. Take a</p> <p>5 moment to review it and let me know when</p> <p>6 you're done.</p> <p>7 (Document review.)</p> <p>8 A. Okay.</p> <p>9 Q. And you'll recognize at the top of</p> <p>10 this exhibit, there's an e-mail exchange at</p> <p>11 the top, the first page, and the top e-mail is</p> <p>12 from James Walker to you and others.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And the attachment is a marked-up</p> <p>16 portion of what appears to be a balance sheet.</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Do you have an understanding as to</p> <p>20 what this document is and what the handwritten</p> <p>21 notations are?</p> <p>22 A. My understanding is that this was</p> <p>23 another version of a representation of assets</p> <p>24 and liabilities based on information at the</p> <p>25 time. It's clear that we were trying to tie</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 this out to some other document. During that</p> <p>3 week there were many exercises of this nature</p> <p>4 as understanding of the transaction and its</p> <p>5 component parts changed.</p> <p>6 So that was part of that ongoing</p> <p>7 process.</p> <p>8 Q. Any idea as to what you're trying</p> <p>9 to tie this spreadsheet out to?</p> <p>10 A. No.</p> <p>11 Q. And is this your handwriting on</p> <p>12 the second page of the exhibit?</p> <p>13 A. No.</p> <p>14 Q. 394A?</p> <p>15 A. No.</p> <p>16 Q. Do you know whose handwriting it</p> <p>17 is?</p> <p>18 A. I don't know.</p> <p>19 (Deposition Exhibit 395A, document</p> <p>20 bearing production numbers</p> <p>21 BCI-EX-(S)-00052268 through</p> <p>22 BCI-EX-(S)-00052270, marked for</p> <p>23 identification as of this date.)</p> <p>24 BY MR. TAMBE:</p> <p>25 Q. Sir, I've placed before you a</p>



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<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 three-page document marked Exhibit 395A. Take</p> <p>3 a moment to review it and let me know when</p> <p>4 you're done.</p> <p>5 (Document review.)</p> <p>6 A. Okay.</p> <p>7 Q. Now, this is an e-mail you'll see</p> <p>8 from Bill Castell to several folks at Barclays</p> <p>9 and other places.</p> <p>10 Do you know what the purpose of</p> <p>11 that this e-mail was? I see addresses here</p> <p>12 for db.com. I assume that's deutschebank.com?</p> <p>13 A. I don't know the people but db.com</p> <p>14 is the standard e-mail ending for Deutsche</p> <p>15 Bank, yes.</p> <p>16 I don't have an understanding as</p> <p>17 to the purpose for this.</p> <p>18 Q. Okay.</p> <p>19 A. It implies that there was a call</p> <p>20 so...</p> <p>21 Q. And there's a reference to an 0745</p> <p>22 DD call. Does that have any meaning to you?</p> <p>23 A. No. DD could mean a number of</p> <p>24 things. I'm not sure.</p> <p>25 Q. Okay. And this e-mail from Bill</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Castell has another calculation of total</p> <p>3 assets, total liabilities.</p> <p>4 A. Um-hum.</p> <p>5 Q. Do you know where these numbers</p> <p>6 come from?</p> <p>7 A. No. No, I don't know where he got</p> <p>8 them from.</p> <p>9 Q. Were you ever a participant in</p> <p>10 discussions with analysts about this</p> <p>11 transaction? External analysts about the</p> <p>12 Lehman Barclays transaction?</p> <p>13 A. No.</p> <p>14 Q. In the week of the 15th, do you</p> <p>15 recall discussions about how and where the</p> <p>16 assets that were being acquired were going to</p> <p>17 be booked? And by where I mean what entity.</p> <p>18 What legal entity.</p> <p>19 A. During that week I don't recall</p> <p>20 any discussions along those lines, no.</p> <p>21 Q. Okay. Subsequent to that week, do</p> <p>22 you recall any discussions about how and where</p> <p>23 the assets were going to be booked?</p> <p>24 A. Yes. Yes, there were numerous</p> <p>25 discussions around entity allocations within</p>
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<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Barclays group, over the next period of time.</p> <p>3 I'm not sure exactly how long.</p> <p>4 Q. And what you refer to as entity</p> <p>5 allocations, what drove the decision as to</p> <p>6 what entity was selected for allocating</p> <p>7 particular assets?</p> <p>8 A. I don't think there was a single</p> <p>9 determining factor. As with any decision of</p> <p>10 that nature you'd be considering a number of</p> <p>11 things like infrastructure that was present in</p> <p>12 the various entities. Capital. The normal</p> <p>13 activities of the entities. These are issues</p> <p>14 of a type which I would expect to feed into</p> <p>15 it. But at a time which I recall being raised</p> <p>16 at one time or another.</p> <p>17 Q. How about tax considerations?</p> <p>18 A. Tax considerations as well, yes.</p> <p>19 Q. So that would be a fourth. It</p> <p>20 wasn't included in one of the three you</p> <p>21 mentioned.</p> <p>22 A. They were examples.</p> <p>23 Q. So let's make sure we covered all</p> <p>24 the possible reasons why you might choose to</p> <p>25 allocate in one entity versus another. You</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 mentioned infrastructure. You mentioned</p> <p>3 capital, by which I assume you mean regulatory</p> <p>4 capital requirements?</p> <p>5 A. Primarily. Yeah, it would seem to</p> <p>6 be encapsulated in regulatory capital.</p> <p>7 Q. Then you talked about normal</p> <p>8 activities. So I guess you were allocating</p> <p>9 the assets to entities that's consistent with</p> <p>10 their normal activities. Is that what you</p> <p>11 mean?</p> <p>12 A. Yes.</p> <p>13 Q. And then another consideration</p> <p>14 would be tax.</p> <p>15 A. Yes.</p> <p>16 Q. You want to minimize the tax</p> <p>17 burden on the enterprise as a whole; is that</p> <p>18 right?</p> <p>19 A. Well, I don't work in the tax</p> <p>20 department so I wouldn't be able to say the</p> <p>21 tax minimization is always the primary reason.</p> <p>22 But tax considerations I would expect to be</p> <p>23 considered -- I wouldn't be able to represent</p> <p>24 that list of four generic categories as an</p> <p>25 exhaustive list clearly.</p>

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Q. In connection with the Lehman/Barclays transaction and the allocations of assets to particular Barclays entities, can you identify any other reason for the allocation other than these four that we've discussed?

A. Not off the top of my head, no.

MR. TAMBE: Let's just take a short break and we'll continue.

THE WITNESS: Sure.

(Recess taken.)

BY MR. TAMBE:

Q. Sir, I've placed before you a document that was previously marked as Exhibit 283A. It's a somewhat long e-mail chain. So if you want to start from the back and read your way up to the front, let me know when you're done and I'll ask you some questions.

(Document review.)

A. Okay.

Q. This e-mail chain, Exhibit 283A, starts off with an e-mail from you at the top to Caroline Owen and others.

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Do you see that?

A. Yeah.

Q. And you're asking for a coordinated approach on how assets are brought onto the Barclays balance sheet, correct?

A. Yeah.

Q. In your second paragraph of your e-mail you state, the second sentence, "I've heard nothing about an SPV plan and generation of gain in PLC..."

And then the sentence goes on.

A. Yeah.

Q. One, what did you mean by SPV plan?

A. There's a reference in Mark Rudduck's e-mail two down about potential sale to an SPV which is responding to a reference in Beatrice Montaudy's preceding e-mail of a plan to acquire assets through an SPV of Barclays.

Q. Do you recall --

A. At all times -- what I was saying there was that I hadn't heard about it and that if there were discussions on it that the

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broader finance needs to be involved.

Q. Do you recall having had discussions with any of these people who are on this e-mail chain about an SPV plan?

A. No, I'm not sure what plan Beatrice would have been talking about at that time.

Q. And the other phrase you use in your e-mail was generation of gain in PLC.

Do you see that? It's in your e-mail, the first e-mail.

A. Yeah.

Q. And when you refer to PLC you're talking about Barclays Bank PLC, correct?

A. Yeah. I'm referring back to Beatrice's e-mail where she identifies the plan as being to acquire through SPV of BBPLC and sell to BCSl to recognize a gain in BBPLC. So I was -- I was saying I didn't know anything about such a plan.

Q. Just so I get through the abbreviations, BBPLC is just Barclays Bank PLC, right?

A. That's correct.

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Q. And BCSL is?

A. It's Barclays Capital Securities, Ltd. I'm 99 percent sure that's the name of it.

Q. Okay. And both the PLC and the limited company are non-US companies, correct?

A. They are both UK companies.

Q. Okay. And your reference or the reference to recognition of gain --

A. They're both UK companies. That's not to say that US operations and assets are not owned by those. So, for example, BBPLC does have a New York branch.

Q. And apart from those two entities, you also have a US broker/dealer entity, correct?

A. That's correct.

Q. And what's the name of that entity?

A. Barclays Capital, Inc. I think is -- BCI is its normal reference.

Q. And if you go to the third page of Exhibit 283A, that's an e-mail from Beatrice Montaudy, Mark Rudduck, and Jasen Yang.

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Do you see that?

A. Yes.

Q. And she makes a reference in there to the 46 percent marginal tax rate applicable to BCI.

Do you see that?

A. Yes.

Q. And so that's the US tax rate applicable to the US broker/dealer, correct?

A. That's how I'd read the sentence. I don't have a particular detailed knowledge of the tax regimen.

Q. In that same sentence, earlier in that sentence she makes a reference to the following: "It was essential to the valuation calculation that the 'discount' between the value of the assets acquired and the purchase price not be subject to the 46 percent marginal US tax rate applicable to BCI."

Do you see that?

A. I do.

Q. Do you have any understanding as to what she meant by that?

A. No, I don't know.

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Q. And the use of the word "discount"

in her sentence, was it your understanding that the differential in the value of the assets acquired versus the purchase price paid was a discount?

MR. SHAW: Objection to form.

A. I don't recall reading the e-mail chain down that far. My response as I read and recollect it was a response to the e-mail from Caroline suggesting that I get involved. So this is certainly the first time I recall seeing the sentence and I don't have any sense as to what Beatrice meant by it.

Q. And other than this e-mail chain, did you hear anyone else at Barclays refer to that differential to mean the value of the assets acquired and the purchase price as a discount?

A. No.

Q. What is Beatrice Montaudy's position?

A. She works in the tax department in New York.

Q. And what's her position within the

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tax department?

A. I'm not sure. At the time she reported to Susan Grbic. She was the US head of tax.

Q. And do you know what her position is now, Beatrice Montaudy's, if she's still with the bank?

A. She's still in the US tax department, yes.

Q. And her position?

A. I don't know.

Q. As the week goes on, Tuesday, Wednesday, Thursday, that week of the 15th of September, was it your understanding that the nature of the transaction was changing?

A. I don't recall precisely what day I became aware of that but certainly by the Monday when a deal had been executed I was aware that the form of the deal was different than that envisaged previously.

Q. So you're comparing Monday, the 15th, to the weekend.

A. Yes.

Q. Now moving further in the week,

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was it your understanding that the deal that was discussed and the deal that was the subject of the acquisition sheets we were looking at before, the Monday/Tuesday transaction, did that change during the course of the week?

A. So from when to when?

Q. So starting Monday, the 15th, the day that Lehman declares bankruptcy, you go back, you reengage in discussions with Lehman on the 15th.

A. Yeah.

Q. That deal that evolves from those discussions, does that change during the course of the week as far as you know?

A. Sorry. That was the question I was responding to previously. I must have misunderstood the question.

Yes. It was -- so over the week from the 15th to Monday, the 22nd when the deal was executed, I understood that the form of the deal changed.

Q. As you sit her, what's your understanding of the how the form of the deal

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2 changed from the 15th to the 22nd?

3 So not what you knew at the time  
4 but what you know now with the benefit of  
5 everything that's happened.

6 A. The main thing I know is that the  
7 deal that was executed finally there may have  
8 been changes in the form which I was not  
9 specifically aware of. The change in the form  
10 I was aware of was that we were entering into  
11 a repo type transaction involving the Fed but  
12 that was the principal difference that I was  
13 aware of.

14 Q. Now, going back to the week of the  
15 15th, did you become aware of this change to a  
16 repo type transaction during that week?

17 A. I can't recall precisely when I  
18 became aware of that because I know I was  
19 definitely aware of it by the 22nd. It's  
20 possible I was aware of that sometime before  
21 then, but I can't recall accurately whether  
22 that was the case or not.

23 Q. Do you recall what role you played  
24 on Thursday, the 18th, Friday the 19th, over  
25 the weekend, onto the 22nd? What were you

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2 doing during that time frame?

3 A. I don't accurately recall. I was  
4 involved in discussions around the balance  
5 sheet I was maintaining so including lofty  
6 placeholder numbers at that stage obviously  
7 and speaking to people to try to improve  
8 those. But beyond that general level I don't  
9 recall specific involvements during those  
10 days.

11 Q. Do you have any understanding of  
12 any efforts made by Lehman and Barclays to  
13 identify additional assets to be delivered by  
14 Lehman to Barclays on Friday, the 19th, and  
15 then the weekend that followed?

16 A. No.

17 Q. Was it your -- is it your  
18 understanding that all of the assets acquired  
19 by Barclays from Lehman, the deal that was  
20 finally executed, are also assets that came  
21 over as a result of the repo?

22 A. My understanding was that the repo  
23 transaction was involved but to my  
24 understanding the assets that were acquired or  
25 the liabilities that were incurred were

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2 from -- I was less involved and interested in  
3 how things developed during the week because I  
4 wasn't particularly involved in that.

5 What I was interested in was the  
6 deal which ended up getting done. So it was  
7 based on the deal documents and conversations  
8 with those who understood elements of any one  
9 asset class. Rather than -- rather than any  
10 sort of development or other sets of  
11 discussions.

12 Q. In terms of working with the  
13 balance sheet which was a document that you  
14 said was an iterative document that you were  
15 working with, how did you obtain information  
16 that you put into your work-in-progress  
17 balance sheet?

18 A. It was principally a process of  
19 liaison and discussion across finance and with  
20 others. So I was speaking with many people  
21 over the course of months to at first get an  
22 understanding of the nature of the transaction  
23 and the assets and liabilities that had been  
24 acquired. And then later at a more granular  
25 level to get an accurate representation for

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2 our books and records and annual report.

3 So it was a project size involving  
4 a huge number of people in the back.

5 Q. And did you actually sit down with  
6 the Asset Purchase Agreement and use that as a  
7 guide to helping you create the balance sheet?

8 A. The Asset Purchase Agreement was  
9 one of the documents which I looked at, yes.

10 Q. And did you actually annotate the  
11 Asset Purchase Agreement against the changes  
12 that were made in the clarification letter?

13 A. I made no annotations that I can  
14 recall, no.

15 Q. Okay.

16 A. I -- no.

17 Q. Were you aware of changes to the  
18 Asset Purchase Agreement that were made via  
19 the clarification letter?

20 A. I wasn't aware of changes. I  
21 was -- the best way of putting it would be  
22 that I looked at the Asset Purchase Agreement,  
23 the amendment to the Asset Purchase Agreement,  
24 and the clarification letter as a  
25 representation of the transaction. I wasn't

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differentiating between the two. I had to look at all of them to get a sense of the transaction that was done.

Q. When's the first time you recall seeing the Asset Purchase Agreement?

A. I definitely saw -- I'd definitely seen it by the 18th. It's possible I may have seen a draft a day or two before that. I say a draft. A version or a copy. I definitely have an e-mail which indicates that I had it on the 18th because I looked for that in preparing for this deposition.

Q. Do you recall what the event or circumstance was that makes you so sure that you had it by the 18th? You saw an e-mail?

A. I saw an e-mail.

Q. Sorry. Do you know why you were provided with a copy on the 18th?

A. Because I was responsible for putting together the acquisition balance sheets and it was important I had a sense of the transaction so I was seeking to get copies of relevant deal documentation.

Q. When's the first that you saw the

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clarification letter?

A. Again, in preparing for the deposition I had looked at my e-mails and I definitely have an e-mail on the 22nd which had the clarification letter attached to it.

Q. Did you find any indication in preparing for your deposition that you received a copy of the clarification letter prior to the 22nd?

A. No.

Q. And in terms of the process you followed in putting together the balance sheet you actually sat down with the operative legal documents to help you prepare the balance sheet?

A. I referred to them, yes. Yes.

(Deposition Exhibit 396A, three-page document bearing production numbers 464242, marked for identification as of this date.)

BY MR. TAMBE:

Q. Sir, I've placed before you a three-page document marked Exhibit 396A. Take a moment to review it and tell me when you're

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done.

MR. SHAW: I'll note that there appears to be an erroneous or additional unknown date on this at the very top. I'm not sure if it's just an artifact of the document production.

MR. TAMBE: Yeah. The first two lines on page 1 are an artifact of the document production. As is the date that appears in the bottom left-hand corner.

(Document review.)

A. Okay.

Q. And you'll see your cover e-mail is an e-mail from you to Martin Kelly at Lehman.

Do you see that?

A. Yes.

Q. And others.

A. Yes.

Q. And who is Martin Kelly?

A. At that time?

Q. Yeah, at that time.

A. Martin was -- I'm not sure

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precisely what his position was but he was a senior member of finance for Lehman.

Q. Okay. And what role does he have now?

A. He's now the CFO of the Americas for Barclays Capital.

Q. And if you follow this e-mail chain it starts with a request from Patrick Clackson to James Walker trying to acquire -- trying to obtain a balance sheet.

Do you see that?

A. Yeah.

Q. And then James sends that request on to Martin Kelly.

Do you see that?

A. Yeah.

Q. And there's an e-mail then from Martin to James Walker and to you with some of the numbers on the balance sheet.

Do you see that?

A. I see the e-mail, yes.

Q. Just in terms of process, let me ask you why was Barclays reaching out to Lehman for an opening balance sheet?



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<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 MR. SHAW: Objection, foundation.</p> <p>3 Q. If you know.</p> <p>4 A. I don't know why James</p> <p>5 specifically sent it to Martin. During the</p> <p>6 period we were speaking with Lehman employees</p> <p>7 who had familiarity with some of the acquired</p> <p>8 assets for some information. But I</p> <p>9 wouldn't -- I wouldn't know precisely why</p> <p>10 James at that time thought that Martin was the</p> <p>11 best source of information for the numbers at</p> <p>12 that stage.</p> <p>13 Q. And as you developed your balance</p> <p>14 sheet, the one that you worked on --</p> <p>15 A. Yeah.</p> <p>16 Q. -- did you work off of the Lehman</p> <p>17 prepared balance sheet or did you create a new</p> <p>18 balance sheet from scratch?</p> <p>19 A. I created a new balance sheet from</p> <p>20 scratch.</p> <p>21 Q. Did you compare your balance sheet</p> <p>22 to the Lehman balance sheet?</p> <p>23 A. There wasn't any Lehman balance</p> <p>24 sheet as such that I was aware of.</p> <p>25 Q. And what I mean by the Lehman</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 balance sheet, the Lehman-prepared balance</p> <p>3 sheet.</p> <p>4 A. Apart from this list here I'm not</p> <p>5 aware of a parallel Lehman balance sheet</p> <p>6 existing.</p> <p>7 (Deposition Exhibit 397A, document</p> <p>8 bearing production numbers</p> <p>9 BCI-EX-(S)-00013605 through</p> <p>10 BCI-EX-(S)-00013606 with attachment,</p> <p>11 marked for identification as of this</p> <p>12 date.)</p> <p>13 BY MR. TAMBE:</p> <p>14 Q. Sir, I've handed you a document</p> <p>15 marked Exhibit 397A. It's a cover e-mail, a</p> <p>16 placeholder sheet, and a spreadsheet. Take a</p> <p>17 moment to review it and let me know when</p> <p>18 you're done.</p> <p>19 (Document review.)</p> <p>20 A. Sure.</p> <p>21 Q. Have you had a chance to review</p> <p>22 it?</p> <p>23 A. Yeah.</p> <p>24 Q. If you look at the cover e-mail,</p> <p>25 the second e-mail on the first page is an</p>
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<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 e-mail from Robert Azerad to you, James</p> <p>3 Walker, and others.</p> <p>4 Do you see that?</p> <p>5 A. Yeah.</p> <p>6 Q. And it attaches a document that's</p> <p>7 titled Copy of Opening Balance Sheet. There's</p> <p>8 some more notations after that.</p> <p>9 A. Sure.</p> <p>10 Q. And the attachment appears to be a</p> <p>11 spreadsheet.</p> <p>12 Do you see that?</p> <p>13 A. Yeah.</p> <p>14 Q. And you'll see that several of the</p> <p>15 items on that spreadsheet tie into the numbers</p> <p>16 on the other exhibit we were looking at,</p> <p>17 Exhibit 396A.</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Does this refresh your</p> <p>21 recollection at all that you received a</p> <p>22 spreadsheet from Lehman setting out the</p> <p>23 opening balance sheet?</p> <p>24 A. Well, I clearly received this</p> <p>25 spreadsheet, yes.</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Did you have any discussions with</p> <p>3 Lehman about the valuation of the total assets</p> <p>4 that's reflected on Exhibit 397A?</p> <p>5 A. No. No.</p> <p>6 Q. And did you have an understanding</p> <p>7 as to the source of that information?</p> <p>8 A. No, I don't have any understanding</p> <p>9 as to the source.</p> <p>10 (Deposition Exhibit 398A, two-page</p> <p>11 document bearing production number</p> <p>12 44230, marked for identification as of</p> <p>13 this date.)</p> <p>14 BY MR. TAMBE:</p> <p>15 Q. Sir, I've handed you a two-page</p> <p>16 document marked Exhibit 397A. Take a moment</p> <p>17 to review that and let me know when you're</p> <p>18 done.</p> <p>19 (Document review.)</p> <p>20 Q. Oh, I'm sorry. 398A.</p> <p>21 A. Okay.</p> <p>22 Q. And in Exhibit 398A in the</p> <p>23 middle -- towards the bottom of the first page</p> <p>24 there's an e-mail from you to Martin Kelly.</p> <p>25 Do you see that?</p>

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2 A. Yes.

3 Q. And you're in particular asking  
4 him about his \$44.88 billion number.

5 Do you see that?

6 A. Yes.

7 Q. And you ask him whether the  
8 additional 1.9 billion of assets separate to  
9 the 15(c)(3) is part of that 44.88 number.

10 Do you see that?

11 A. I see that, yeah.

12 Q. What's your understanding of what  
13 the 1.9 billion of additional assets is a  
14 reference to?

15 A. The 1.9 is a reference there to  
16 securities which were due to Barclays clearing  
17 process. And the purpose of my mail was  
18 essentially to ensure that we weren't double  
19 counting when trying to identify the assets  
20 that needed to be valued.

21 Q. And you see the response from  
22 Martin Kelly to you where he says, "Includes  
23 the 1.9B."

24 Do you see that?

25 A. Yes.

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2 Q. Do you recall further discussions  
3 on this topic as to whether the 44.88 included  
4 the 1.9?

5 A. Yes.

6 Q. And do you recall that ultimately  
7 you resolved the 1.9 was not included as part  
8 of the 44.88?

9 A. Well, if we're using shorthand for  
10 the 1.9 and the 44.88 to refer to assets from  
11 the clearance box and assets which came across  
12 the repo, then the conclusion of those  
13 discussions was that not all of the assets  
14 from the clearance boxes had come across. And  
15 there was some which were still to be  
16 received. The 1.9, 2.9, and 44.88 were not --  
17 did not end up being represented as Barclays'  
18 view of the fair value of the assets which is  
19 the numbers that are represented in that  
20 financial statement.

21 I'm not sure what the source of  
22 those two numbers themselves and the values  
23 was.

24 Q. And it's your understanding that  
25 the assets in the clearance boxes is what

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2 ultimately became Schedule B; is that right?

3 A. I don't have enough of an  
4 understanding about the precise composition of  
5 Schedule B as it relates to understanding  
6 there. My understanding was that Barclays was  
7 to due to receive the assets from the clearing  
8 box and we received some but not others at  
9 that time.

10 Q. Putting on your 30(b)(6) hat now  
11 for a moment.

12 A. Yeah.

13 Q. What is your understanding of  
14 Schedule A to the Asset Purchase Agreement?

15 A. My understanding of Schedule A was  
16 that it was the representation of the assets  
17 which were coming across to Barclays against  
18 the reverse repo.

19 Q. So your understanding is that all  
20 of the assets that are listed on Schedule A  
21 were assets that had been pledged to the Fed  
22 and were transferred to Barclays.

23 MR. SHAW: Objection.

24 Mischaracterizes the prior testimony.  
25 Foundation.

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2 Q. You can answer if you understand  
3 the question.

4 A. I was aware that there was a  
5 reconciliation process which was required of  
6 Schedule A at the detailed CUSIP level but  
7 it's my understanding that was what Schedule A  
8 was intended to represent, yes.

9 Q. Just so we're clear, every CUSIP  
10 that appears on Schedule A it is your  
11 understanding as the 30(b)(6) witness for  
12 Barclays that every one of those CUSIPs was a  
13 CUSIP that had been pledged to the Fed?

14 A. No. That's not my understanding.

15 MR. SHAW: And I'm going to object  
16 this witness has been offered only with  
17 respect to the Schedule A and Schedule B  
18 issues to talk about the Barclays effort  
19 to value the securities that appear on  
20 Schedule A and Schedule B.

21 MR. TAMBE: Okay. So let's just  
22 mark the 30(b)(6) and maybe it's already  
23 been marked. Has it already been  
24 marked?

25 MR. McMAHON: This one I think has

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2 not been.

3 MR. TAMBE: Okay. So then let's  
4 mark it. We'll just mark the 30(b)(6)  
5 notice so we have some precision as to  
6 what he's being offered for and what  
7 he's not being offered for.

8 MR. SHAW: Okay.  
9 (Pause on the record.)

10 BY MR. TAMBE:

11 Q. Sir, I've placed before you a  
12 document that's been marked 81B.

13 MR. TAMBE: My first question is  
14 really a point of clarification for your  
15 counsel. On items 1 and 2 of Schedule A  
16 of this 30(b)(6) notice for what -- for  
17 what subjects or topics is Mr. Romain  
18 the 30(b)(6) witness for Barclays?

19 MR. SHAW: Mr. Romain is a  
20 30(b)(6) witness on the issue of  
21 Barclays' efforts to value the  
22 securities that were on Schedule A and  
23 Schedule B.

24 BY MR. TAMBE:

25 Q. Taking off your 30(b)(6) hat, do

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2 you have any understanding as to how the  
3 assets that came to be listed on Schedule A  
4 and Schedule B were selected?

5 A. No, I don't. No.

6 Q. And taking off your 30(b)(6) hat,  
7 do you have any understanding as to how the  
8 assets on Schedule A and Schedule B were  
9 transferred to Barclays?

10 A. No, I don't. No.

11 Q. Do you have an understanding as to  
12 whether the assets on Schedule A and Schedule  
13 B have, in fact, been transferred to Barclays?

14 A. In terms of -- at the CUSIP level  
15 I was aware there was a reconciliation process  
16 so my understanding is that is not a -- that's  
17 not a perfectly accurate statement was my  
18 understanding. My involvement with the  
19 Schedule A and Schedule B assets was in  
20 relation to ensuring that the assets that were  
21 received by Barclays were the properly  
22 recorded value. The process by which they  
23 came to be transferred to Barclays is an area  
24 which I don't have particular insight into.

25 (Pause on the record.)

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2 Q. Sir, I've placed before you a  
3 document marked previously as Exhibit 86B.  
4 Would you take a moment to look at this  
5 spreadsheet and let me know when you're done.  
6 (Document review.)

7 A. Okay.

8 Q. When you talked about the  
9 valuation of the Schedule A and Schedule B  
10 assets, does this document, Exhibit B, relate  
11 to that process in any way?

12 A. It does, yes.

13 Q. Is 86B the summary level valuation  
14 of the Schedule A assets?

15 A. Yeah. It's the summary level  
16 valuation for -- yeah, for those assets.

17 Q. So now with your 30(b)(6) hat  
18 firmly on I'm going to ask you to explain to  
19 me at the summary level from Exhibit 86B what  
20 is the information that's in 86B. And you can  
21 start with the spreadsheet and go by rows or  
22 columns. Describe this collection of  
23 information.

24 MR. SHAW: Before we do, can we  
25 just confirm that the witness believes

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2 this was the final version of that?

3 MR. TAMBE: Sure.

4 Q. Is it the final version?

5 A. It looks like the final version.  
6 To be definitive I would need to compare -- to  
7 be definitive sitting here right now I would  
8 need to compare the numbers with those on the  
9 acquisition balance sheet.

10 Q. And we had earlier this morning  
11 looked at what you believed to be the final  
12 version of the acquisition balance sheet.

13 A. Yeah.

14 Q. Let me see if I can locate that.  
15 Which is Exhibit 377A.

16 A. Yeah.

17 Q. Are you doing that comparison now,  
18 sir?

19 A. I am, yes.

20 Yes. This is the final version.  
21 There were some immaterial off-line  
22 adjustments made just to tidy up right before  
23 the financial statements were published but  
24 the differences were very minor.

25 Q. So keep before you the final

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acquisition balance sheet which is 377. Also keep in front of you 86B. I'm going to add one more document to your pile for now and that's a document previously marked as Exhibit 87B and if you could confirm that that is the valuation of the Schedule B assets.

A. Sorry. I think there's been -- there's confusion there.

Q. Okay.

A. Exhibit 86B is the valuation of the assets which were received by Barclays, whether Schedule A or Schedule B.

Q. All right.

A. The Exhibit 87B is the valuation of the -- of securities which were received on or around the 22nd of September from JPMorgan Chase.

Q. Okay. No, you're absolutely right. Okay. So going back to 86B, 86B includes both Schedule A and Schedule B.

A. Yeah. It includes all of the Schedule A and Schedule B assets that were received around -- well, around the time of the deal. So yes.

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Q. All right. So looking at -- and 87B, is that a final schedule as well, if you can confirm that?

A. It is, yes.

Q. Let's start with 87B which is the JPM -- it has the title JPM assets.

Do you see that?

A. Yes.

Q. And putting on your 30(b)(6) hat which should remain firmly on this whole series of questions.

A. Sure.

Q. Describe for me what this spreadsheet is.

A. This spreadsheet is a summary of a valuation of those assets designed for inclusion in our books and records and in our financial statement disclosures.

Q. And going across the columns, column A of this spreadsheet lists -- these are the top third asset categories.

Do you see that?

A. Yes.

Q. There's a phrase there, Portfolio

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3. Does that have any meeting to you, sir?

A. Portfolio 3 was the term used to refer to the JPMorgan assets.

Q. And then you have several asset categories. Lines 13 and 14 have the initials PMTG and PMTG unknown.

Do you see that?

A. Yes.

Q. What is PMTG?

A. PMTG is a group within the firm. It's a business line. It relates -- let me get this correct. Principal mortgage trading group I think is the full name.

Q. There's a separate line item, line 6, which states Agency Mortgage.

A. Yeah.

Q. Okay. Do you know if any agency mortgages are included within PMTG?

A. Well, the line for PMTG is not supposed to indicate that these were all assets of a PMTG type. That group wouldn't typically trade in some of these items. The significance here is that PMTG were the group that were taking responsibility for

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coordinating the valuation of the acquired assets from a business perspective.

So what happened was that initially assets were taken into a central pot, if you like, such that they could be considered, you know, as part of the acquisition.

Subsequent to that assets were transferred to the appropriate group that would trade in those asset classes as a data matter also in the Street or whatever decision was made with those assets subsequent to acquisition. But PMTG were responsible until that happened from a business perspective.

Q. So assets that would have come over from JPMorgan obviously would not have had a PMTG tag on them. They would have been agency mortgages, corporates, munies, et cetera, right?

A. All asset classes.

Q. If you look behind the line 13 PMTG does it break out into separate asset classes?

A. The breakout of the asset classes

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<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 is rows 6 to 10.</p> <p>3 Oh, in terms of the PMTG item.</p> <p>4 Q. Yes.</p> <p>5 A. Right. I may have misunderstood</p> <p>6 the question then.</p> <p>7 The PMTG -- the non-PMTG items are</p> <p>8 principally the ones in 6 to 10. The items in</p> <p>9 row 13 would have been the ones which, by</p> <p>10 nature, were more relevant to PMTG as a group.</p> <p>11 But PMTG were responsible for all of them</p> <p>12 until they were transferred out of this sort</p> <p>13 in effect pool which the assets were initially</p> <p>14 transferred into. As a matter of practice</p> <p>15 they were our single point liaison for the</p> <p>16 Lehman acquisition.</p> <p>17 Q. All right. Column B is titled</p> <p>18 Notional. And what's your understanding of</p> <p>19 what that means?</p> <p>20 A. The contractual notional of the</p> <p>21 underlying assets.</p> <p>22 Q. Column C is -- well, before we go</p> <p>23 to C, when you say contractual notional that</p> <p>24 is the principal amount owing on those</p> <p>25 securities?</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes. The principal value, yes.</p> <p>3 Q. Column C is FO value. Does that</p> <p>4 mean front office value?</p> <p>5 A. It does, yes.</p> <p>6 Q. And whose front office?</p> <p>7 A. Our front office.</p> <p>8 Q. What --</p> <p>9 A. Barclays, sorry.</p> <p>10 Q. What is the significance of a</p> <p>11 front office value?</p> <p>12 MR. SHAW: Objection.</p> <p>13 Q. What does it mean?</p> <p>14 A. The process by which assets are</p> <p>15 valued within Barclays is that first off the</p> <p>16 front office would value. The second line of</p> <p>17 consideration is that price testing will occur</p> <p>18 within the product control group within</p> <p>19 finance. So the initial marking of any book</p> <p>20 including this book would be done by the front</p> <p>21 office.</p> <p>22 Q. And does the front office include</p> <p>23 the traders who trade these products?</p> <p>24 A. Yes. The front office would be</p> <p>25 the traders.</p>
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<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Column D is JP value.</p> <p>3 A. Yes.</p> <p>4 Q. And that's the value -- well, what</p> <p>5 is that?</p> <p>6 A. That's the value that JPMorgan</p> <p>7 were contributing to the securities on the</p> <p>8 30th of September.</p> <p>9 Q. So both column C and column D are</p> <p>10 30th of September values.</p> <p>11 A. That's correct.</p> <p>12 Q. Do you know when this particular</p> <p>13 sheet, 87B, was prepared?</p> <p>14 A. There were -- again, there were</p> <p>15 multiple versions of this as our understanding</p> <p>16 of the assets developed. The -- until a final</p> <p>17 version was produced which was shortly before</p> <p>18 the annual report was produced.</p> <p>19 Q. When was the earliest version of</p> <p>20 this document prepared, 87B?</p> <p>21 A. The earliest version in that form</p> <p>22 would have been shortly after the 22nd of</p> <p>23 December. Because we weren't able to -- the</p> <p>24 appropriate value for us to include in our</p> <p>25 books and records was the value of the</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 inventory on the day we received the items,</p> <p>3 being the 22nd of December.</p> <p>4 Prior to that there were -- there</p> <p>5 were understandings of what assets we were</p> <p>6 expecting to receive and therefore preliminary</p> <p>7 versions. But nothing which had data which</p> <p>8 was struck to a date which would have been</p> <p>9 appropriate for inclusion could have existed</p> <p>10 before the 22nd of December.</p> <p>11 Q. The column C and column D are</p> <p>12 values as of the 30th of September, right?</p> <p>13 A. Yeah.</p> <p>14 Q. Why was that date picked?</p> <p>15 A. It was picked largely for</p> <p>16 practical reasons. It was a month-end. It</p> <p>17 didn't have any significance for books and</p> <p>18 records. Which was the primary purpose of</p> <p>19 this spreadsheet.</p> <p>20 Q. Was there any discussion within</p> <p>21 Barclays at valuing both doing a front office</p> <p>22 value and a JP value of these JPM assets as of</p> <p>23 the 22nd of September 2008?</p> <p>24 A. Sorry. I don't understand the --</p> <p>25 Q. Was there any discussion of doing</p>



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2 the valuation as of the 22nd of September as  
3 opposed to the 30th of September?

4 A. There was discussion with auditors  
5 as to what the appropriate date to include in  
6 our books and records was for these. The two  
7 dates -- the two relevant dates were the 22nd  
8 of December and the 22nd of September.  
9 Because you've got the transaction date and  
10 you've got the date you receive the assets and  
11 there's two different ways of viewing the  
12 transaction from an accounting perspective  
13 purely the decision which was reached was to  
14 use the 22nd of December.

15 Q. How did Barclays calculate its  
16 front office values as of the 30th of  
17 September for these assets which it did not  
18 receive until the 22nd of December?

19 A. I can talk to the general process  
20 of valuation as at the date. In terms of how  
21 the front office went about its -- how it went  
22 about it in a historical sense, the processes  
23 would have been the same and were the same.  
24 But struck at a different date. We had the  
25 items -- we had the identity of the items. So

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2 time because their significance at that time  
3 was marginal.

4 Q. Again, just so I understand what  
5 you're telling me, are you saying that you  
6 knew as early as the 30th of September the  
7 list of assets that you eventually received on  
8 December 22nd?

9 A. No.

10 Q. No. When did you first know what  
11 specific assets you would be receiving from  
12 JPMorgan Chase?

13 A. I'm not sure what date that that  
14 was absolutely finalized.

15 Q. So, again, I'm going back to this  
16 process that was followed in coming up the  
17 with the column C values which is the front  
18 office values. Was it a process where your  
19 traders in December, sometime in December got  
20 a list of the JPMorgan Chase assets by CUSIP  
21 number and went back to historical pricing  
22 data to try and price those as of the 30th of  
23 September.

24 A. That's correct.

25 Q. Okay. And just focusing on that

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2 it's a case of valuing as at based off market  
3 data which is relevant as of that date. So  
4 I'm not sure if I'm understanding the  
5 question.

6 Q. I think towards the end of your  
7 answer you answered it. So let me see if I  
8 understand it.

9 A. Yeah.

10 Q. For the items that you received  
11 from JPMorgan Chase on December 22nd, on or  
12 about December 22nd, your traders went back to  
13 market data to try to value those assets as of  
14 the 30th of September; is that right?

15 A. There had been previously drafts  
16 of expected values which predated the 22nd of  
17 December. And the 30th of September was a  
18 date which was looked at on a consistent basis  
19 as the understanding as to the identity of the  
20 assets that we would receive changed. And  
21 then when we reached the 22nd of December, the  
22 22nd of -- the valuation as of the date the  
23 items were received were updated and were  
24 focused upon. There was not a great deal of  
25 focus on the 30th of September values at that

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2 exercise, why didn't they price them as of the  
3 22nd of September? For that column, column C.

4 A. That exercise wasn't done for the  
5 first time until the 22nd of December. The  
6 understanding as to the items would have  
7 changed as understanding as to what items  
8 would be received changed in the days and  
9 weeks preceding the 22nd of December. So it  
10 wasn't a new process, let's value them on the  
11 30th of September, on the 22nd of December.  
12 That wasn't the first time where people were  
13 looking at that. Over the period -- over the  
14 period from the acquisition date up until the  
15 22nd of December there was an ongoing process  
16 to try and get a handle on what value - what  
17 assets and what value of assets we would end  
18 up receiving. And that was again an iterative  
19 process. This just represents a part of that  
20 being two month-end values and the actual  
21 value that we received.

22 Q. Let me try it another way.

23 Was September 30th the month end  
24 picked because there was better or more  
25 complete pricing data available as of the 30th

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<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 of September as opposed to the 22nd of</p> <p>3 September?</p> <p>4 A. I'm not sure.</p> <p>5 Q. And do you have any sense</p> <p>6 generally whether this collection of assets</p> <p>7 you received from JPMorgan Chase increased in</p> <p>8 value or decreased in value from the 22nd of</p> <p>9 September to the 30th of September?</p> <p>10 A. I don't have a great sense of the</p> <p>11 sense which is created by the summary. The</p> <p>12 values for the 30th of September were not</p> <p>13 items that I particularly focused on because</p> <p>14 from the point of the view of the process of</p> <p>15 valuing being -- the point of view of valuing</p> <p>16 the portfolio, the important number was the</p> <p>17 most up to date number.</p> <p>18 If you're looking at previous</p> <p>19 month ends, say the 31st of October or the</p> <p>20 30th of November, as time was progressing,</p> <p>21 then at that time it was -- the interesting</p> <p>22 thing would be based on our assessment of what</p> <p>23 assets we expect to receive, what they'd be</p> <p>24 worth at that time, at the point in time we're</p> <p>25 setting because we didn't know when we</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 received them so the 22nd of December wasn't a</p> <p>3 date which had any significance for us earlier</p> <p>4 than that. So we were constantly updating our</p> <p>5 best estimate of the value we expected to</p> <p>6 receive.</p> <p>7 So there were values done of this</p> <p>8 portfolio or our best estimate of this</p> <p>9 portfolio on a number of dates preceding that</p> <p>10 as time progressed. And this was the last one</p> <p>11 because this was the one that corresponded</p> <p>12 with the date that we received them.</p> <p>13 Q. Just help me trace your -- trace</p> <p>14 the connection between 87B and 377A. You</p> <p>15 could use line items or page numbers.</p> <p>16 A. Sure.</p> <p>17 Q. I just want to see where the</p> <p>18 numbers, if they do, from 87B track onto the</p> <p>19 spreadsheet that's 377A.</p> <p>20 A. The tracking is the cell E-18 from</p> <p>21 37B.</p> <p>22 Q. So that's 3.9 billion and change.</p> <p>23 A. Yeah.</p> <p>24 Q. All right.</p> <p>25 A. That feeds through to -- the</p>
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<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 easiest one to look at is actually the one</p> <p>3 which is numbered 844. That feeds through to</p> <p>4 cell C-8. And then cell G-18 is a component</p> <p>5 of cell C-12.</p> <p>6 MR. SHAW: Just so we're clear,</p> <p>7 when you said G-18 you were talking</p> <p>8 about on 87B and when you were talking</p> <p>9 about C-12 you were talking on the</p> <p>10 second page of 377A?</p> <p>11 THE WITNESS: That's correct.</p> <p>12 Q. Okay. So the -- looking at 87B,</p> <p>13 the cell you pointed me to was E-18.</p> <p>14 A. Yes.</p> <p>15 Q. That's the column dated 22</p> <p>16 December 2008 BCG value, correct?</p> <p>17 A. Yes.</p> <p>18 Q. And the total number is 3.916</p> <p>19 billion and change, right?</p> <p>20 A. (Witness nods.)</p> <p>21 Q. And when you go over to the</p> <p>22 acquisition balance sheet which is</p> <p>23 Exhibit 377A on the second page in column --</p> <p>24 in cell C-8, the number of 3.92 is just a</p> <p>25 rounded up 3.916, correct?</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 A. That is correct.</p> <p>3 Q. There is in the acquisition</p> <p>4 balance sheet a line item for valuation</p> <p>5 adjustment which is a negative \$2.09 billion</p> <p>6 number, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And what you have also told me is</p> <p>9 for the JPMorgan Chase assets there is an item</p> <p>10 number which is G-18 which is \$176 million.</p> <p>11 A. Yeah.</p> <p>12 Q. That is also part of the 2.09</p> <p>13 valuation adjustment.</p> <p>14 A. That's correct.</p> <p>15 Q. All right. Okay. So on your</p> <p>16 acquisition balance sheet, the JPM inventory</p> <p>17 which is line 8, that is being valued as of</p> <p>18 December 12th, 2008, correct?</p> <p>19 A. December 22nd.</p> <p>20 Q. Sorry. December 22nd, 2008.</p> <p>21 A. That's correct.</p> <p>22 Q. You're right, yeah.</p> <p>23 The line item which is 7 on your</p> <p>24 acquisition balance sheet which states Initial</p> <p>25 Inventory, that is being valued as of the 22nd</p>

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<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 of September, 2008, correct?</p> <p>3 A. Yes.</p> <p>4 Q. And those valuations and the other</p> <p>5 items on your acquisition balance sheet roll</p> <p>6 up to the negative goodwill item of</p> <p>7 4.7 billion, correct?</p> <p>8 A. Those items are part of the net</p> <p>9 assets which contribute towards the negative</p> <p>10 goodwill calculation, yes.</p> <p>11 Q. And if I go to the first page of</p> <p>12 Exhibit 337A, which is a form of the</p> <p>13 acquisition balance sheet, that was used for</p> <p>14 disclosure purposes, correct?</p> <p>15 A. Yeah.</p> <p>16 Q. On that first page of</p> <p>17 Exhibit 377A, the values for the assets are as</p> <p>18 of those different dates that we've talked</p> <p>19 about. Some of those assets are valued as of</p> <p>20 the 22nd of December and some of them are</p> <p>21 being valued as of the 22nd of September.</p> <p>22 A. That's correct.</p> <p>23 Q. All right. Other than those two</p> <p>24 dates, are there any other dates as of which</p> <p>25 assets were valued for purposes of your</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 acquisition balance sheet?</p> <p>3 A. No.</p> <p>4 Q. Let's take a look at 86B which --</p> <p>5 I'm sorry. Let's stay with 87B for a minute.</p> <p>6 A few other items here.</p> <p>7 Column E on 87B which is BCG</p> <p>8 value, what's that? The product control</p> <p>9 group?</p> <p>10 A. Yes. That's correct.</p> <p>11 Q. And what is that? An internal</p> <p>12 independent price valuation group of some</p> <p>13 type?</p> <p>14 A. Yes. That's the mid price value</p> <p>15 that resulted from the process of product</p> <p>16 control price testing front office values. So</p> <p>17 that was the end agreed Barclays value. The</p> <p>18 mid price.</p> <p>19 Q. And just to be clear, what that</p> <p>20 process was, the obtaining of the BCG value,</p> <p>21 could you describe how just mechanically the</p> <p>22 process that's followed within Barclays to</p> <p>23 come up with those BCG values. Go from the FO</p> <p>24 values, the front office values, to the BCG</p> <p>25 values.</p>
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<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 A. Yeah. So the front office will</p> <p>3 mark their assets -- the traders who trade the</p> <p>4 assets and are closest to it for that purpose,</p> <p>5 that's the same process that we followed on a</p> <p>6 business as usual basis for all assets, all</p> <p>7 trading assets which are held by Barclays</p> <p>8 Capital.</p> <p>9 Those valuations would then be</p> <p>10 considered by price testing group which</p> <p>11 resides within product control. They would</p> <p>12 test those prices by reference to observe for</p> <p>13 market data and indices and close proxies and</p> <p>14 broker quotes and other sources of independent</p> <p>15 information which will differ according to</p> <p>16 asset class and security type.</p> <p>17 The difference between those two</p> <p>18 values would be assessed and discussed and a</p> <p>19 consensus value will be included on the</p> <p>20 balance sheet.</p> <p>21 Q. The next column over, F, is MV</p> <p>22 with liquidity which is market value with</p> <p>23 liquidity; is that right?</p> <p>24 A. Yes. That's the market value</p> <p>25 stated at bid price. So under accounting</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 standards we're required to measure assets at</p> <p>3 bid so our best estimate of exit price. And</p> <p>4 that's what column F is. And that's the net</p> <p>5 number which feeds into the acquisition</p> <p>6 balance sheet and therefore the negative</p> <p>7 goodwill calculation and financial statement</p> <p>8 disclosures.</p> <p>9 Q. At the bottom section of this</p> <p>10 spreadsheet, 87B, is titled Entity Level</p> <p>11 Breakdown.</p> <p>12 Do you see that?</p> <p>13 A. Yeah.</p> <p>14 Q. Could you describe briefly what</p> <p>15 information is being shown in that section of</p> <p>16 the spreadsheet.</p> <p>17 A. Yeah. That's the allocation of</p> <p>18 the items between two legal entities.</p> <p>19 Q. Okay. What are those two legal</p> <p>20 entities?</p> <p>21 A. LMBR is BBPLC is part of a branch</p> <p>22 of that. And LIICT is a separate entity whose</p> <p>23 full name -- I can't recall its full name off</p> <p>24 the top of my head. It was another</p> <p>25 wholly-owned subsidiary of the Barclays group.</p>

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2 I can't recall the full name.  
3 Q. Okay. If you look at 337A which  
4 is the acquisition balance sheet --  
5 A. Yeah.  
6 Q. -- and if you look at the second  
7 page, line 8 which is the JPM inventory, we  
8 earlier looked at cell C-8 which is the BCG  
9 value number, the 3.92, correct?  
10 A. Yes.  
11 Q. And if you read across that line,  
12 that 3.92 number is allocated between BCI,  
13 right? .69 is allocated to BCI?  
14 A. I have misspoke. The LMBR relates  
15 to BCI not to BBPLC.  
16 Q. All right. And the remainder,  
17 3.23 billion, is allocated to column N as in  
18 Nancy, 3.23.  
19 Do you see that?  
20 A. Yes.  
21 Q. And that's a Cayman -- that's  
22 Cayco is what it's called?  
23 A. Yeah. That was a shorthand. That  
24 wasn't its full name. That's the main reason  
25 why I can't recall the full name of it because

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2 that you expected to receive but have yet not  
3 received?  
4 A. No. This spreadsheet is the  
5 valuation of the inventory we did receive.  
6 Q. And I apologize if I've asked you  
7 this before. Other than 86B and 87B, are you  
8 aware of any other inventory that you're  
9 expecting to receive that you haven't yet  
10 received?  
11 A. In addition to 86B and 87B?  
12 Q. Yes.  
13 A. Yes, I am.  
14 Q. Okay. And what is that other  
15 inventory?  
16 A. Items from the LBI clearance boxes  
17 which has not yet been transferred to  
18 Barclays.  
19 Q. And so those items have not been  
20 included in your calculations in 86B and 87B;  
21 is that correct?  
22 A. That's correct.  
23 Q. And, therefore, they haven't --  
24 well, maybe not therefore. And they have not  
25 been included in your acquisition balance

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2 I was used to referring to it in shorthand as  
3 Cayco.  
4 Q. What can you tell us about what  
5 Cayco is?  
6 A. It's a subsidiary of Barclays  
7 Group.  
8 Q. Is it a Cayman Islands company?  
9 A. It was certainly going to be set  
10 up in the Caymans which is why it was referred  
11 to as Cayco. My recollection is that's --  
12 yeah, my recollection is that is what happened  
13 here.  
14 Q. And just to be clear, the BCI  
15 where .69 of the 3.9 billion is allocated,  
16 that's the US broker/dealer, correct?  
17 A. That's correct, yes.  
18 Q. Let's turn to 86B.  
19 86B is Schedule A and Schedule B,  
20 correct?  
21 A. 86B is -- yeah, it's the inventory  
22 which was received -- it's the inventory which  
23 was received the weekend of the 21st and the  
24 days preceding that.  
25 Q. Does 86B include any inventory

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2 sheet, Exhibit 377A?  
3 A. That's not correct.  
4 Q. Okay. So where on 87 -- on 377A  
5 have you provided for items that you expect to  
6 receive but, in fact, have not yet received?  
7 A. To the extent that they have been  
8 recognized they are included in cell C-11.  
9 Q. And that's an item of about 700  
10 million, correct?  
11 A. Yes.  
12 Q. And it's titled Additional  
13 Unencumbered Assets?  
14 A. Yes.  
15 Q. And now setting those aside, what  
16 else is there in terms of collateral that you  
17 expect to receive, have not yet received, and  
18 haven't accounted for in your acquisition  
19 balance sheet?  
20 A. And haven't accounted for.  
21 Q. Have not accounted for.  
22 A. There are further unencumbered  
23 assets which we commonly refer to as list B-2  
24 and C which were not included in cell C-11 of  
25 the second page of 377A in terms of other

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assets that have not been recognized.  
There is also collateral raised  
futures positions held in Lehman affiliates  
which has not been recognized. There is --  
actually, would it be possible to refer to  
those notes? I'm sure there are two smaller  
items -- there are four items which I -- I'm  
aware there are four items. That's two of  
them. There are two other items which I can't  
immediately recall.

Q. And the notes that you're  
referring to are the notes that were handed  
over to us this morning.

A. Yes.

Q. Is it your handwritten notes?

A. Yes.

(Deposition Exhibit 399A,  
handwritten notes, marked for  
identification as of this date.)

A. Oh, yes. So the principal and  
interest on --

Q. Hold on one second. Let's just  
get --

A. Sure.

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Q. I've handed you an exhibit which  
has been marked as 399A. Are those the notes  
that you were referring to?

A. They are.

Q. Okay. And if you could state for  
the record what the other items are. The  
other two items are.

A. The other two items are principal  
and interest on the unencumbered assets which  
are summarized in cell C-11 of Exhibit 377A.  
And also -- and also collateral against  
customer positions which held in the form of  
letters of credit were not recognized for  
accounting purposes.

Q. Just on your notes, where in your  
notes are you? This is page 1 of your notes,  
right?

A. Yes. It's the second -- it's the  
second bullet. So I've just been through the  
four subbullets of the second bullet.

Q. And the second bullet just to be  
clear is titled Assets Not Received Not on  
Balance Sheet, Not on BS.

A. Yes.

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Q. That's it.

A. Yes.

Q. And your estimate of the value of  
those four items is 765 million and then you  
have a provision, correct?

A. The provision is against those  
items. They're two separate items.

Q. Okay. So the valuation then -- or  
your estimate of the valuation of those four  
items is 765 million?

A. Yes.

Q. And, again, just to be clear,  
those do not appear -- that item, 765 million,  
is not included on your acquisition balance  
sheet, Exhibit 377A, correct?

A. Correct.

Q. And it's not part of 86B and 87B.

A. That's correct.

Q. Okay.

All right. 86B. There are two  
parts of the first page of Exhibit 86B that I  
want to draw your attention to. There appears  
to be a valuation and calculation as of the  
22nd of September which goes from line 1

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through line 30; is that right?

(Document review.)

A. Yes.

Q. And then starting on line 32 down  
to line 45, if I'm reading this correctly,  
this appears to be a valuation or a  
calculation as of 9 January, '09; is that  
correct?

A. No. It's a valuation as at 22nd  
of September but they're two slightly  
differing versions. One is between rows 3 and  
14 and the other is between 32 and 44. There  
were a couple of individual adjustments which  
needed to be made which are summarized in  
those 27 to 30.

But the valuations are -- for  
financial reporting purposes that net  
difference which is 57 million from cell E-30  
is not particularly material.

Q. And in connecting 86B and 377A,  
which cells on 86B roll up into the second  
page of 377A?

A. So the ones in row 14.

Q. And so those would be D-14 and



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<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 F-14?</p> <p>3 A. That's correct. As I said, there</p> <p>4 were some immaterial adjustments but if you</p> <p>5 were to -- there were some immaterial</p> <p>6 adjustments which were made at the last minute</p> <p>7 but at a material level the cells D-14 and</p> <p>8 F-14 are the ones which roll up in the</p> <p>9 acquisition accounting in our financial</p> <p>10 statements.</p> <p>11 Q. The differential between the</p> <p>12 values in the -- in column D, BCG value, and</p> <p>13 the column E, Market Value 9/22, that's again</p> <p>14 pricing at the bid. Is that the reason for</p> <p>15 the differential?</p> <p>16 A. Yes. It's the bid/offer</p> <p>17 differential, yes.</p> <p>18 Q. The differential between column C</p> <p>19 and column D, do you know why there's a</p> <p>20 differential there?</p> <p>21 A. The column C values don't feed</p> <p>22 into our financial reporting. They were</p> <p>23 values which were ascribed to the securities</p> <p>24 by the custodian whereas we are required to</p> <p>25 value them by asset class according to</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 relevant accounting standards and in line with</p> <p>3 valuation methodology used for other similar</p> <p>4 assets already owned by the bank. So the</p> <p>5 important numbers from our financial reporting</p> <p>6 perspective are those between D and F rather</p> <p>7 than what the custodian may have attributed to</p> <p>8 them.</p> <p>9 Q. You told us earlier that this</p> <p>10 document, 86B, you confirmed that this was the</p> <p>11 final version that rolled up into your</p> <p>12 disclosure document, correct?</p> <p>13 A. Yes.</p> <p>14 Q. When was the first version of 86B</p> <p>15 created?</p> <p>16 A. The form of it changed and evolved</p> <p>17 over time. So this is the final</p> <p>18 representation of valuation process which was</p> <p>19 ongoing from the time of the acquisition. The</p> <p>20 spreadsheet in which that process was embodied</p> <p>21 may have been simpler or different at various</p> <p>22 stages through that time. But it was an</p> <p>23 evolution.</p> <p>24 Q. And if I understand the way this</p> <p>25 spreadsheet works, 86B, there is in fact CUSIP</p>
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<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 level valuation data that rolls up into each</p> <p>3 of these categories, line 3, line 4, line 5,</p> <p>4 et cetera; is that correct?</p> <p>5 A. That's correct.</p> <p>6 Q. Now, some of the collateral that</p> <p>7 was transferred over to Barclays on the 18th,</p> <p>8 19th and that time period of September 2008,</p> <p>9 some of that's been sold, correct, by</p> <p>10 Barclays?</p> <p>11 A. Some of it, yes.</p> <p>12 Q. Okay. How, if at all, has the</p> <p>13 value at which assets were sold been reflected</p> <p>14 in this spreadsheet?</p> <p>15 Let me just rephrase that.</p> <p>16 Is the price obtained by Barclays</p> <p>17 on the sale of assets that were acquired from</p> <p>18 Lehman, is that reflected on this spreadsheet?</p> <p>19 A. Not directly. What I would say is</p> <p>20 that there are various levels of liquidity</p> <p>21 embodied in the various underlying assets. So</p> <p>22 you've got very liquid and frequently traded</p> <p>23 positions whereby they could be valued in a</p> <p>24 straightforward manner by reference to</p> <p>25 observed for market data for the 22nd of</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 September.</p> <p>3 And then there are less liquid</p> <p>4 assets which trade very infrequently and for</p> <p>5 which is there not much market data for those</p> <p>6 assets.</p> <p>7 In order to arrive at a 22nd of</p> <p>8 September valuation you'll be looking at a</p> <p>9 number of things, transactions in similar</p> <p>10 assets, recent transactions in assets, et</p> <p>11 cetera. And for those -- assets of those</p> <p>12 types, the price at which assets were sold</p> <p>13 shortly after may be a factor which would be</p> <p>14 taken into account because it may be</p> <p>15 additional evidence as to what the appropriate</p> <p>16 mark was for the 22nd of September.</p> <p>17 But if those prices are used, then</p> <p>18 they are used only as evidence to try to</p> <p>19 improve the estimate of value on the 22nd of</p> <p>20 September. And, therefore, would be adjusted</p> <p>21 for any changes in circumstances or market</p> <p>22 conditions between the 22nd of September and</p> <p>23 the dates of sale.</p> <p>24 So the simplest answer is, no,</p> <p>25 they're not reflected at all directly. But</p>

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the more -- the more accurate answer is that for illiquid assets sales may factor into the valuations as one part of the consideration of the right price.

Q. Okay. They may factor in and, in fact, were factored in for certain CUSIPs.

A. I don't have a sense of to what extent those sales did feed in because that's getting down to a more CUSIP-by-CUSIP level consideration.

In terms of the general process, for the more liquid securities to the extent they were sold, yes, they would have been taken into account. But to get an accurate sense of whether that occurred in any material sense it would be necessary to talk to the relevant asset class experts.

Q. The liquidity value column, column F, BCG Liquidity Value, in effect the numbers that appear there are basically column D minus column E, correct?

A. Yes. That's the bid/offer adjustment.

Q. But if I understand your last --

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your prior answers, that's not just the bid/offer adjustment, correct?

A. No. That is just the bid/offer adjustment.

Q. Okay. So any adjustments that are made on account of sales and price discovery through sales of assets, are they not reflected in column F?

A. They would be reflected. Any adjustments to mid price that are required to get to bid are included in that column for whatever reason based on whatever evidence.

Q. So you would reflect the bid/offer adjustment where you didn't transact but where you had a bid and offer you would price it at the bid, correct?

A. All of the securities included there are priced at the bid.

Q. And in those instances where you actually had a transaction in the weeks subsequent to acquiring the assets, and you sold the asset, you actually executed as a particular price, you would use that as the price or at least that would factor into your

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analysis of the appropriate price?

A. It may do. Depending on other evidence which is available in order to get to the right bid price.

Q. Do you have any understanding as to why the PCG values in column D were different from the BoNY values in column C?

A. No.

MR. TAMBE: We could break for lunch.

MR. SHAW: Forty-five minutes?

MR. TAMBE: Forty-five minutes.

(Luncheon recess taken at 12:28 p.m.)

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AFTERNOON SESSION

(Time noted: 1:22 p.m.)

GARY ROMAIN, resumed and testified as follows:

EXAMINATION BY (Cont'd.)

MR. TAMBE:

Q. I understand, Mr. Romain, you wanted to clarify or add to one of your answers before the lunch break?

A. Oh, yes. That's correct. When we were talking about the securities which come across, I was asked about whether any which have not been received by Barclays were included on the acquisition balance sheet and I directed you towards the additional unencumbered assets on to which is cell C-11 in the second page of Exhibit 377A.

I want to clarify, that is not the only asset on the acquisition balance sheet which had not been received by Barclays. There's four types of which that is one. But the four -- they're actually -- they're summarized in the four bullets on the top of the first page of Exhibit 399A. So there's

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futures collateral held from brokers. There's the OCC collateral largely in the form of government securities. There's the unencumbered assets item. And there's also the amount of \$769 million receivable from 15(c)(3) or equivalent tax. So to be complete, that's the sum of the assets included on the acquisition balance sheet which are not in physical possession of Barclays.

Q. Okay. And other than C-11, where else would you find on this acquisition balance sheet, which is the second page of 377A, those items?

A. So the first item, the futures collateral is included in item C-17.

Q. Futures customer balances.

A. That's right.

The second item, OCC collateral, is included in item C-18. The unencumbered assets we talked about as being item C-11. And the 15(c)(3) or equivalent is item C-15.

Q. In your handwritten notes, Exhibit 399A, you have a bracket and the words

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app 3 billion.

Do you see that?

A. Yes.

Q. So approximately \$3 billion of asset value on the acquisition balance sheet is attributable to these four categories of assets not received.

A. That's correct.

Q. All right. And if you look at the line items on 377A, C-11 is -- is the entirety of that cell comprised of assets not yet received?

A. Yes.

Q. How about the 15(c)(3) assets?

A. Yes.

Q. So none of that has been received by Barclays as yet.

A. That's correct.

Q. The futures customer balances?

A. That's a mixture. Some of that has been received and some of that has not.

Q. Okay. And then the OCC customers on clearing margin?

A. That item's actually easier to see

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on the following page where it's shown gross because that item is the net of the collateral balances and the fair value of the derivative positions.

The collateral balance is item F-16 and item F-26. There's no distinction between those two lines items other than historically I had one number and then I added another number until I realized quite shortly into the process that I was actually looking at a single number.

So the total of 2.29 is partly received and partly not received.

Q. Okay. Just so I follow through then on that, on the acquisition balance sheet on page 2 of Exhibit 377 for OCC customer and clearing margin you have an amount of .98.

A. Yes. .98 directly feeds through from cell F-26.

Q. On the next page.

A. Yes.

Q. Page 845?

A. Whereas the item, 0.21 is the net of item F-16 and item F -- E-42. Sorry.

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Q. And where does that show up on the acquisition balance sheet? Is that C-14?

A. The net of F-16 and E-42 on the third page shows up in item C-14.

Q. Exchange traded options.

A. Yes.

Q. And C-14, that's an amount actually received by Barclays.

A. The -- C-14 is the net of two items from the point of view of the gross balance sheet. It's split up principally into a valuation because qualitatively it's a different process to value the open exchange derivative positions as opposed to valuing the cash and securities which represent the margin against those positions.

So the item really to look at -- or the items to look at are F-16 and F-26. The total of that is the total of the customer margin against OCC positions and some of that total, 2.29, has been received and some has not.

Q. And how much has not been received?

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2 A. It's approximately a billion  
3 dollars.  
4 (Deposition Exhibit 400A, document  
5 bearing production numbers  
6 BCI-EX-(S)-00024451 through  
7 BCI-EX-(S)-00024455, marked for  
8 identification as of this date.)

9 BY MR. TAMBE:

10 Q. Mr. Romain, we're back to a  
11 non-30(b)(6) topic. I've placed before you  
12 Exhibit 400A. Take a moment to review and it  
13 let me know when you're done.

14 (Document review.)

15 A. Okay.

16 Q. And you'll see there's a cover  
17 e-mail from Patrick Clackson to you.

18 A. Um-hum.

19 Q. Which is forwarding the attachment  
20 to this document, Exhibit 400A.

21 Do you see that?

22 A. Yes.

23 Q. And is the attachment a document  
24 you're familiar with?

25 A. It's a document I remember seeing,

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2 yes.

3 Q. And the last page of this exhibit  
4 which is titled Appendix B, Preliminary  
5 Balance Sheet, is that a document that you  
6 prepared?

7 A. I can't tell if there's been any  
8 amendment to it but it is essentially a  
9 document I prepared, yes.

10 Q. And this is an e-mail dated  
11 September 22nd, 2008. Both the e-mails on the  
12 first page are as of that date.

13 Do you see that?

14 A. Yes.

15 Q. The 22nd was the Monday following  
16 the Lehman bankruptcy filing. On that day  
17 what was your source of information for the  
18 items that appear on this last page of  
19 Exhibit 400A?

20 A. I don't recall the source at that  
21 time. This was another version of the  
22 iterative balance sheet that was developing  
23 over the period. The iteration at any given  
24 date was based on the best information I had  
25 available at the time.

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2 Q. Does the valuation adjustment line  
3 if you see up in the asset allocation -- do  
4 you see it?

5 A. Yes.

6 Q. That's a negative \$2.83 billion  
7 number?

8 A. Yes.

9 Q. On the 22nd of September your BCG  
10 group had not gone through and done any kind  
11 of valuation adjustment, correct?

12 A. I can't recall if it's accurate to  
13 say they had done nothing. It's fair to say  
14 that the detailed valuation work that was  
15 required to get to the end valuations had not  
16 yet occurred.

17 Q. Do you have any understanding as  
18 to how that adjustment number of 2.83 billion  
19 was arrived at on Monday the 22nd of  
20 September?

21 A. No.

22 Q. I understand from other e-mails  
23 that Stephen King may have been the source of  
24 that number. Is that your understanding?

25 A. I don't recall if that number was

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2 sourced from Stephen or otherwise.

3 Q. You know Stephen, correct?

4 A. I do, yes.

5 Q. And what role did he play at  
6 Barclays at this point in September of '08?

7 A. So he was a senior trader within  
8 the PMCG group and was one of the people in  
9 the front office that was most involved with  
10 the -- with the acquisition from a business  
11 perspective and he was one of my main contacts  
12 from a business perspective during the entire  
13 process.

14 Q. And did you have any discussions  
15 with Stephen as early as the 22nd about  
16 valuation adjustments to the inventory that  
17 had come over?

18 A. I don't recall precise dates of  
19 conversations I had with him. I was certainly  
20 having conversations with him throughout the  
21 process to work on ensuring that the  
22 acquisition balance sheet I would be treating  
23 it at any time was as accurate as I could make  
24 it.

25 Q. We could probably move to the side

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<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 for now 87B, your handwritten notes, and the</p> <p>3 other stuff. But keep 400A, the document we</p> <p>4 were just looking at handy. And especially</p> <p>5 the last page of 400A.</p> <p>6 (Pause on the record.)</p> <p>7 (Deposition Exhibit 401A, document</p> <p>8 bearing production numbers</p> <p>9 BCI-EX-(S)-00052667 through</p> <p>10 BCI-EX-(S)-00052668 with attachment,</p> <p>11 marked for identification as of this</p> <p>12 date.)</p> <p>13 BY MR. TAMBE:</p> <p>14 Q. I've handed you a three-page</p> <p>15 document marked Exhibit 401A. Take a moment</p> <p>16 to look at it and let me know when you are</p> <p>17 done.</p> <p>18 (Document review.)</p> <p>19 A. Okay.</p> <p>20 Q. And this is an e-mail from you to</p> <p>21 Rich Ricci and others. Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. And you're attaching another</p> <p>24 iteration of the acquisition balance sheet,</p> <p>25 correct?</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. And you state in your e-mail "The</p> <p>4 \$2.83 valuation adjustment is S. King's first</p> <p>5 cut only."</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. If you could turn to the balance</p> <p>9 sheet which is the last page of Exhibit 401A.</p> <p>10 A. (Witness complies.)</p> <p>11 Q. And if we compare it to the</p> <p>12 balance sheet we were looking at which is</p> <p>13 400A, both of these are -- the cover e-mails</p> <p>14 are 22nd September 2008. It looks like</p> <p>15 Exhibit 401 is a little bit later in the day</p> <p>16 than Exhibit 400. You could confirm that for</p> <p>17 yourself.</p> <p>18 A. Yeah. They're both on the same</p> <p>19 date and, yes, they're the e-mails from</p> <p>20 slightly different times during the day, yes.</p> <p>21 Q. Right. And 401 is after 400,</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 Q. There's a couple of changes that I</p> <p>25 want to bring to your attention. One is on</p>
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<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Exhibit 401A, you have a line item now for</p> <p>3 Friday P&amp;L approximately.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And so that's reflecting a Friday</p> <p>7 profit and loss number?</p> <p>8 A. That's what Friday P&amp;L stands for,</p> <p>9 yes.</p> <p>10 Q. And that's a number of about</p> <p>11 \$200 million.</p> <p>12 A. Yes.</p> <p>13 Q. What is your understanding of what</p> <p>14 that entry referred to?</p> <p>15 A. I don't recall putting together</p> <p>16 this precise version. The item is included as</p> <p>17 part of the calculation of fair value based on</p> <p>18 best information at the time. But in terms of</p> <p>19 how precisely it fit into that calculation I</p> <p>20 don't have a clear recollection.</p> <p>21 Q. The valuation adjustment number</p> <p>22 is the same as before, the 2.83 billion</p> <p>23 negative.</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Q. And there's a note associated with</p> <p>3 that adjustment, note 5.</p> <p>4 A. Yes.</p> <p>5 Q. And in Exhibit 401A note 5 states</p> <p>6 Trades are initially booked at BoNY prices.</p> <p>7 2.83 billion is initial estimate of the</p> <p>8 adjustment Barclays' marks.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And, again, do you know what</p> <p>12 process was followed in coming up with this</p> <p>13 \$2.83 billion number on the 22nd?</p> <p>14 A. That would have been -- or was an</p> <p>15 early estimate of the adjustment that would be</p> <p>16 required to get the inventory to the 42.55</p> <p>17 number which would have been the best</p> <p>18 estimates of the prior bid price at that time.</p> <p>19 As talked about, these numbers were moving</p> <p>20 frequently during this period as additional</p> <p>21 information was acquired.</p> <p>22 But that's what the 2.83 -- that's</p> <p>23 the purpose of the 2.83 was fulfilling in that</p> <p>24 calculation there at that time.</p> <p>25 Q. Okay. And I could see</p>



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<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 mathematically how the 2.83 sort of gets</p> <p>3 subtracted from the 45.18 but what's the</p> <p>4 process that yields the 2.83? Is it CUSIP by</p> <p>5 CUSIP? Is it by asset category? Is it an</p> <p>6 estimate of the entire portfolio? How is that</p> <p>7 done? Back at that point in time.</p> <p>8 A. Back at that point in time I don't</p> <p>9 have clear understanding of the process that</p> <p>10 Stephen went through to get that initial cut.</p> <p>11 It was understood at that time that we were</p> <p>12 working on provisional numbers and a</p> <p>13 provisional understanding of the assets. And</p> <p>14 that a great deal of work involving Stephen</p> <p>15 King and front office but also finance price</p> <p>16 testing and discussion with PwC, our auditors,</p> <p>17 would be required before we got to a number</p> <p>18 which was sufficiently verified to be included</p> <p>19 in our financial statements.</p> <p>20 Q. I understand, Mr. Romain, that you</p> <p>21 probably went through a lot of additional</p> <p>22 steps before you put anything in your reported</p> <p>23 financial statement. I really am focusing on</p> <p>24 that date, the 22nd of September, the</p> <p>25 transaction has closed that morning. I just</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 want to know if you know what process was</p> <p>3 followed in arriving at that estimate that</p> <p>4 morning.</p> <p>5 A. I don't know, no.</p> <p>6 Q. If you'd look down in</p> <p>7 Exhibit 4012A, below the net asset calculation</p> <p>8 there are line items -- I'm sorry -- below the</p> <p>9 total asset calculation, there are line items</p> <p>10 for repo liability, cure, retention, bonus.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And if you compare the entries for</p> <p>14 cure and bonus accrual on Exhibit 401A to</p> <p>15 those same items on 400A you'll see different</p> <p>16 entries, right?</p> <p>17 A. Yes, yes.</p> <p>18 Q. So the cure payment which was</p> <p>19 reflected at 2.25 in Exhibit 400A in</p> <p>20 Exhibit 401A is .8 billion.</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. And do you know a reason for why</p> <p>24 that number changed on the 22nd of September?</p> <p>25 A. Well, at that time when I was</p>
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<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 putting together the acquisition balance</p> <p>3 sheets, I didn't have an understanding as to</p> <p>4 what cure payment was or what the nature of</p> <p>5 our obligation was. So there were initial</p> <p>6 placeholder numbers included for that as well</p> <p>7 as a number of other items. The source of</p> <p>8 those numbers I don't recall precisely now but</p> <p>9 I do recall that they were moving quickly as I</p> <p>10 had discussions with people who had an</p> <p>11 understanding of the terms of the</p> <p>12 acquisition -- the terms of the acquisition in</p> <p>13 that regard and better understood the</p> <p>14 appropriate item -- the appropriate quantum to</p> <p>15 be included.</p> <p>16 The cure in particular had two</p> <p>17 sources of uncertainty which persisted for</p> <p>18 some time. The first was uncertainty as to</p> <p>19 amount which was an exercise by which we</p> <p>20 needed to identify which contracts we'd be</p> <p>21 accepting and therefore which cure payments</p> <p>22 would be paid.</p> <p>23 And the second was a question of</p> <p>24 accounting treatment under appropriate</p> <p>25 accounting standards because in acquisition</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 accounting you're required to include only</p> <p>3 obligations that you take on. And there is a</p> <p>4 way of viewing the cure payments which</p> <p>5 would -- and which would imply that we should</p> <p>6 not recognize any cure payments as an accrual</p> <p>7 in the acquisition balance sheet because we</p> <p>8 had no obligation to accept any contracts.</p> <p>9 That was an issue which was</p> <p>10 discussed for some time with PwC. That</p> <p>11 discussion was running parallel with the</p> <p>12 separate consideration of how much cure we</p> <p>13 thought we'd end up paying. The end</p> <p>14 resolution of that was that we felt that the</p> <p>15 appropriate interpretation of accounting</p> <p>16 standards would require us to include our best</p> <p>17 estimate for cure payments in the acquisition</p> <p>18 balance sheet and that's what we ended up</p> <p>19 doing.</p> <p>20 Q. And by the time you end up</p> <p>21 disclosing your financial statements for the</p> <p>22 acquisition, did you ultimately use the</p> <p>23 financial number that was actually paid out by</p> <p>24 Barclays for cure?</p> <p>25 A. By the time we -- by the time we</p>

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<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 published our financial statements the process</p> <p>3 was not quite complete but very substantially</p> <p>4 complete. So the amount we included as an</p> <p>5 accrual was \$224 million. My recollection is</p> <p>6 that by the time we reached financial</p> <p>7 statements we paid very close to that amount</p> <p>8 and there was a small amount which we were</p> <p>9 intending still to pay. And when I revisited</p> <p>10 it in the middle of this year the difference</p> <p>11 between what we paid and what we recognized in</p> <p>12 our financial statements was very small. A</p> <p>13 quantum of less than a million dollars as I</p> <p>14 recall.</p> <p>15 Q. Okay. And as you compared 400A</p> <p>16 and 401A, the net asset number in 401A is</p> <p>17 \$4.52 billion, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And that's up from 3.67 billion in</p> <p>20 Exhibit 400A.</p> <p>21 A. Yes.</p> <p>22 Q. I've handed you, sir, a document</p> <p>23 previously marked as Exhibit 361A. Take a</p> <p>24 moment to review it and let me know when</p> <p>25 you're done.</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 (Document review.)</p> <p>3 MR. WOOD: Can I just note on the</p> <p>4 record that I think this same document</p> <p>5 has also been marked as Exhibit 384 in</p> <p>6 another deposition.</p> <p>7 (Document review continuing.)</p> <p>8 A. Okay.</p> <p>9 Q. And sir, do you recognize this as</p> <p>10 a forward of your e-mail that we were just</p> <p>11 looking at, Exhibit 401A, by Mr. Clackson to</p> <p>12 Rich Ricci and so on?</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And you can confirm this for me</p> <p>16 but it appears to me that the attachment to</p> <p>17 Exhibit 361A, the acquisition summary,</p> <p>18 although the printout is a little different I</p> <p>19 believe it's the same spreadsheet as 401A but</p> <p>20 correct me if I'm wrong.</p> <p>21 A. Yes. Yes, it is.</p> <p>22 Q. Now, if you focus on Mr.</p> <p>23 Clackson's e-mail to Rich Ricci forwarding</p> <p>24 this draft balance sheet, he states, "So some</p> <p>25 things we have to keep working on to squeeze</p>
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<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 out what we can, but looks more like 3 to 3.5</p> <p>3 rather than 4 plus."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. What's he referring to with the 3</p> <p>7 to 3.5 rather than the 4 plus?</p> <p>8 MR. SHAW: Objection, foundation.</p> <p>9 A. I don't know.</p> <p>10 Q. Was it your understanding that</p> <p>11 there was a target negative goodwill number</p> <p>12 that you were looking to achieve?</p> <p>13 A. No.</p> <p>14 Q. That wasn't your understanding.</p> <p>15 A. No, that wasn't my understanding.</p> <p>16 Q. Did you have an understanding as</p> <p>17 to any target goodwill number?</p> <p>18 A. No.</p> <p>19 Q. Rich Ricci responds to Patrick</p> <p>20 Clackson by saying, "What have we told Group?"</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Do you understand what the</p> <p>24 reference to "group" there is?</p> <p>25 A. I don't -- I don't know what he</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 means. Typically when we refer to group we</p> <p>3 mean Barclays Group.</p> <p>4 Q. Putting this exhibit aside, at</p> <p>5 this time period, early the week of the 22nd,</p> <p>6 were you party to any discussions about trying</p> <p>7 to achieve a negative goodwill number that</p> <p>8 coincided with the negative goodwill number</p> <p>9 that had been set out in the Barclays board</p> <p>10 presentations the prior week?</p> <p>11 A. No.</p> <p>12 Q. Was there any concern about not</p> <p>13 achieving the negative goodwill number that</p> <p>14 had been disclosed to the board?</p> <p>15 MR. SHAW: Objection, foundation.</p> <p>16 A. Not that I was aware of.</p> <p>17 Q. Sir, I've handed you what's been</p> <p>18 previously marked as Exhibit 385. If you</p> <p>19 could take a moment to review that e-mail</p> <p>20 chain and let me know when you're done.</p> <p>21 (Document review.)</p> <p>22 A. Okay.</p> <p>23 Q. You'll see this e-mail chain</p> <p>24 begins again on page 2 with the cover e-mail</p> <p>25 to Exhibit 401A which is your e-mail to the</p>

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2 group.  
3 Do you see that?  
4 A. Yes.  
5 Q. And I want to draw your attention  
6 to the first page of Exhibit 385 which is the  
7 third e-mail down which is from Rich Ricci to  
8 Patrick Clackson.  
9 Do you see that?  
10 A. Yes.  
11 Q. It says, "Need to get to 4 or no  
12 write-down capacity."  
13 Write-down is misspelled but it  
14 says write-down capacity.  
15 Do you see that?  
16 A. Yes.  
17 Q. Do you know what that was a  
18 reference to?  
19 A. No, I don't.  
20 (Deposition Exhibit 402A, document  
21 bearing production number  
22 BCI-EX-(S)-00052678, marked for  
23 identification as of this date.)  
24 BY MR. TAMBE:  
25 Q. Sir, I've handed you a one-page

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2 that you were trying to value the total  
3 portfolio as of Friday close of business  
4 prices?  
5 A. Yeah. That point in time --  
6 that's the direction I'm giving to Jasen at  
7 that point in time, yes.  
8 Q. I understand from your testimony  
9 this morning that for the collateral that was  
10 transferred over, the Thursday, Friday, the  
11 weekend, the valuation date that was picked  
12 was September 22nd, the Monday, right?  
13 A. That's true.  
14 Q. Why the change? Why was that the  
15 ultimate decision?  
16 A. At that point in time the deal had  
17 only just been done and my understanding of  
18 what happened when and other terms and what  
19 had been received when was incomplete and  
20 evolving. And over time discussions of  
21 various aspects occurred and one of which was  
22 the appropriate valuation date and the  
23 appropriate valuation date was determined to  
24 be the 22nd of September.  
25 Q. In Exhibit 401A you have a line

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2 document marked Exhibit 402A. Take a moment  
3 to review it and let me know when you're done.  
4 (Document review.)  
5 A. Okay.  
6 Q. And you'll see the bottom e-mail  
7 on this page, Exhibit 402A, is an e-mail from  
8 you to Jasen Yang copied to others.  
9 Do you see that?  
10 A. Yes.  
11 Q. Okay. Who is Jasen?  
12 A. Jasen is another trader in the  
13 PMGT group. I believe he reports to Stephen  
14 King.  
15 Q. You state in your second  
16 paragraph, "What we're ultimately trying to  
17 get to is a valuation for the total portfolio  
18 (including the 1.9 billion from the box) for  
19 inclusion in the acquisition balance sheet -  
20 Friday close so not including any  
21 Monday/Tuesday gain/losses which should remain  
22 in trading P&L."  
23 Do you see that?  
24 A. Yeah.  
25 Q. Were you stating in that sentence

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2 item there for Friday P&L.  
3 Do you see that?  
4 A. Yes.  
5 Q. Can you tell from that version of  
6 the acquisition summary balance sheet as of  
7 what date you were valuing the inventory?  
8 A. I can't, no. And to be clear I  
9 wasn't valuing the inventory.  
10 Q. Or Barclays was valuing the  
11 inventory.  
12 A. Yeah.  
13 Q. Because the line right above the  
14 Friday P&L line in Exhibit 401A reads  
15 Inventory Thursday Close.  
16 Do you see that?  
17 A. Yes.  
18 Q. And Thursday is when the Fed repo  
19 assets were transferred over to Barclays,  
20 correct?  
21 A. I don't have full information of  
22 exactly what was transferred precisely when.  
23 Q. Do you know who would have  
24 provided you with the Friday P&L number that  
25 appears in Exhibit 401A?

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1 G. ROMAIN - HIGHLY CONFIDENTIAL  
2 A. No.  
3 Q. When the valuation was done as of  
4 Monday the 22nd of September were the prices  
5 used close of business prices on Monday the  
6 22nd?  
7 A. I'm not sure. I'm not the  
8 valuation expert. I'm not sure what the  
9 CUSIP-by-CUSIP approach that was taken was.  
10 And, you know, what market convention is for  
11 valuing the various security types which were  
12 involved.  
13 Q. Okay. Who would know the answer  
14 to that?  
15 A. It would be the price testing group  
16 within product control.  
17 Q. And just so I understand, just  
18 using 401A as the example, if the decision was  
19 made -- and the decision was made -- to price  
20 the inventory as of Monday, September 22nd,  
21 having done that, would you take into account  
22 in valuing the assets any P&L on Friday?  
23 A. I'm not sure I quite understand  
24 the question. Sorry. Take into account in  
25 what way?

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1 G. ROMAIN - HIGHLY CONFIDENTIAL  
2 BCI-EX-(S)-00024689 through  
3 BCI-EX-(S)-00024690 with attachment,  
4 marked for identification as of this  
5 date.)  
6 BY MR. TAMBE:  
7 Q. Sir, I've handed you a three-page  
8 document marked Exhibit 403A. A cover e-mail,  
9 a placeholder page, and then a spreadsheet.  
10 Let me know when you're done reviewing it.  
11 (Document review.)  
12 A. Okay.  
13 Q. And the last page of Exhibit 403A,  
14 if you can confirm that that's another version  
15 of the acquisition balance sheet, correct?  
16 A. It is, yes.  
17 Q. And it's a cover e-mail from you  
18 to Patrick Clackson and that's dated September  
19 24th, correct?  
20 A. Yes.  
21 Q. Now, if you compare Exhibit 403A,  
22 the acquisition balance sheet in Exhibit 403A,  
23 with Exhibit 401A, you'll see that the net  
24 asset number has \$6.01 billion.  
25 Do you see that?

1 G. ROMAIN - HIGHLY CONFIDENTIAL  
2 Q. As you do in Exhibit 401A.  
3 In Exhibit 401A, if I understand  
4 what's going on there, there's a valuation --  
5 at least it appears to be, inventory Thursday  
6 close. And then the gain that is earned by  
7 Barclays during the day on Friday is reflected  
8 as additive to the asset value.  
9 Do you see that?  
10 A. Yes.  
11 Q. If the decision was made that you  
12 weren't going to value the inventory as of  
13 Thursday, you were going to value the  
14 inventory as of Monday, would that eliminate  
15 the need to record a P&L gain for Friday?  
16 A. You'd be valuing it by reference  
17 to the Monday price. So that would be the sum  
18 of what you'd need to do.  
19 Q. But this P&L gain that's reflected  
20 on Exhibit 401A, that would be categorized as  
21 the trading P&L, correct?  
22 A. I don't know what that item  
23 particularly was.  
24 (Deposition Exhibit 403A, document  
25 bearing production numbers)

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2 A. Yes.  
3 Q. And at least one of the drivers of  
4 that change is the valuation adjustment  
5 number. And you'll see it's down from 2.83 to  
6 1.38.  
7 A. Sorry. You changed my reference  
8 to which version?  
9 Q. Sure. The two documents you  
10 should be looking at are Exhibit 401A and  
11 403A.  
12 A. Yes. One of the differences is  
13 that.  
14 Q. Okay. Now, that's roughly a  
15 \$1.5 billion difference, correct? In the  
16 valuation adjustment.  
17 A. Well, it's -- in terms of the  
18 adjustment that's made to the 45.18 to get to  
19 a net number the difference is slightly less.  
20 Q. Right.  
21 A. Because there's no 0.2.  
22 Q. The P&L, the Friday P&L number is  
23 no longer --  
24 A. Yes.  
25 Q. But looking at just the valuation

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<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 adjustment line you've gone from a 2.83</p> <p>3 negative to a 1.38 negative adjustment,</p> <p>4 correct?</p> <p>5 A. My concern there is whether we're</p> <p>6 comparing like with like. I don't know enough</p> <p>7 about the 0.2 to know whether that was rolled</p> <p>8 into the 1.38 or not.</p> <p>9 Q. And do you have any understanding</p> <p>10 as to the reason for the change from 2.83 to</p> <p>11 the 1.38 putting aside the 0.2?</p> <p>12 A. No.</p> <p>13 Q. Both in 401A and 403A on -- for</p> <p>14 the inventory pricing there's a note that</p> <p>15 reads, "Trades are initially booked at BoNY</p> <p>16 prices."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Do you know what the convention is</p> <p>20 in pricing securities that are used for repo</p> <p>21 trading?</p> <p>22 A. I don't know.</p> <p>23 Q. And do you know whether the Bank</p> <p>24 of New York was Barclays' agent for that repo</p> <p>25 transaction?</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 A. I'm not sure of the precise</p> <p>3 relationships in that regard, no.</p> <p>4 MR. TAMBE: Let's take a short</p> <p>5 break.</p> <p>6 (Recess taken.)</p> <p>7 BY MR. TAMBE:</p> <p>8 Q. Mr. Romain, we talked this morning</p> <p>9 about some of the assets acquired by Barclays</p> <p>10 having been sold.</p> <p>11 Do you remember that?</p> <p>12 A. Once the assets were acquired a</p> <p>13 number of things happened to them. Some would</p> <p>14 have been sold relatively shortly. Some were</p> <p>15 transferred into ongoing trading books to be</p> <p>16 managed by the relevant traders. Once that</p> <p>17 happens they're commingled with assets which</p> <p>18 were acquired in other ways so there would</p> <p>19 have been some which had been elected and</p> <p>20 there would have been some which were held for</p> <p>21 a long period.</p> <p>22 Q. We had a brief discussion about</p> <p>23 whether prices at which the assets were sold</p> <p>24 factored into the valuation analysis in some</p> <p>25 way.</p>
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<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Do you recall that discussion?</p> <p>3 A. Yeah.</p> <p>4 Q. Okay. Would transfers of assets</p> <p>5 within the Barclays Group be treated as sales</p> <p>6 and factored into that calculation?</p> <p>7 A. In terms of the measurement</p> <p>8 objective being an external fair value, those</p> <p>9 prices would not factor -- those prices in and</p> <p>10 of themselves would not factor into the</p> <p>11 valuations.</p> <p>12 However, the price at which</p> <p>13 something is transferred into may well be a</p> <p>14 representation of what our best estimate of</p> <p>15 the market price is at that time in which case</p> <p>16 they may well be the same number.</p> <p>17 But in terms of the considerations</p> <p>18 which feed into the price that assets were</p> <p>19 transferred internally within Barclays I don't</p> <p>20 have a great deal of insight into how that</p> <p>21 works in practice.</p> <p>22 Q. And just so I understand your</p> <p>23 answer, at least for some of the assets</p> <p>24 acquired from Lehman there were transfers of</p> <p>25 those assets within Barclays, correct?</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. And there were values ascribed to</p> <p>4 those assets when those assets were</p> <p>5 transferred internally, correct?</p> <p>6 A. Yes.</p> <p>7 Q. And on some occasions you have</p> <p>8 taken into account the values at which those</p> <p>9 internal transfers were done for purposes of</p> <p>10 valuing those assets for the acquisition</p> <p>11 balance sheet; is that correct?</p> <p>12 A. No.</p> <p>13 Q. Okay. Is it the case that</p> <p>14 internal transfers and internal transfer</p> <p>15 values were disregarded in doing your</p> <p>16 acquisition balance sheet valuation?</p> <p>17 A. I was not directly involved in the</p> <p>18 valuation. I did not factor into the</p> <p>19 acquisition balance sheet transfers. What I</p> <p>20 factored into the acquisition balance sheets</p> <p>21 was Barclays' best estimate of the bid price</p> <p>22 for those securities which was determined in</p> <p>23 accordance with Barclays' ongoing valuation</p> <p>24 policies and applicable accounting standards.</p> <p>25 Q. Okay. And when you took into</p>



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account Barclays' best estimate would  
Barclays' best estimate include bids provided  
by Barclays' own internal traders?  
A. The process for valuation is  
dependent on the asset type. And for less  
liquid assets it's more judgmental than it is  
for more liquid assets. However, the maximum  
possible use is always made of external data.  
So the views of traders as to the appropriate  
valuation of an asset being their best  
estimate of an external bid price for that  
asset is a part of the valuation process which  
is supplemented by external market data and  
price testing -- and price testing procedures.  
The precise balance between those depends on  
the asset but external market data to the  
extent it is available is typically the best  
evidence of the appropriate fair value. So  
that's the concept. When you get down to  
individual security level, that's where my  
sort of level of knowledge ends.  
Q. The spreadsheets that roll up into  
the summary sheets -- we looked at 87B and 86B  
which were the summary level sheets that then

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rolled up into the acquisition balance sheet.  
Do you remember that?  
A. Yes.  
Q. Okay. The CUSIP level  
spreadsheets, do those indicate what  
particular methodology or process was used on  
a CUSIP-by-CUSIP basis for determining the  
value?  
A. Not to my recollection. That's  
the result of the process. But for the less  
liquid and more complex instruments, the  
methodology is not something which were  
typically captured in the Excel spreadsheets.  
There are extensive valuation procedures and  
policies within the bank which are used as a  
reference point for how to value these assets.  
And the approach, the value of these assets  
was in mind in those policies both internally  
and in the opinion of the our outside  
auditors.  
Q. In terms of orders of magnitude  
can you ascribe any percentage to the  
percentage of this portfolio, the percentage  
of the inventory that you believe is the fault

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of this less liquid more complex difficult to  
value type of security.  
A. There's no dividing line really.  
It's a spectrum.  
Q. I just want to make sure I have  
one point covered. It's my understanding that  
at least some of the assets acquired from  
Lehman were subject to internal sales within  
Barclays from one desk to another desk. Is  
that your understanding as well?  
A. Yes.  
Q. Okay. Were the prices at which  
those assets sold within Barclays ever counted  
by you as a sale price that was used in the  
valuation?  
A. No. I was -- I had no awareness  
of the price at which securities were sold.  
What I asked for and received was the fair  
values of the assets.  
Q. So a trader reporting a fair value  
of an asset to you may have factored in an  
internal sale price but you wouldn't know  
that.  
A. The trader wasn't reporting

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valuations to me.  
Q. Who was?  
A. The numbers that fed into those  
were the numbers which had been through the  
process which we discussed earlier which  
involved input from traders, price testing  
within finance, and auditor review.  
So those are the numbers which I  
took, the numbers which had passed through  
those processes and were then viewed as the  
agreed appropriate fair value for the  
instruments.  
Q. Okay. And so the processes that  
yield the numbers that you then used, those  
processes could have included prices at which  
assets sold within Barclays; is that correct?  
MR. SHAW: Objection. That calls  
for spec --  
A. I wouldn't want to speculate on  
that. All I can say which is not a response  
to your question, but it's pertinent to it, is  
that the values which came out of that process  
were Barclays' view of the appropriate fair  
value for those instruments, irrespective of

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whether transfers had occurred in those instruments or not subsequent to the transaction date. That was the measurement objective and that's what -- and that is the basis on which those numbers were considered.

Q. I'm not quarrelling with you, sir, as to whether Barclays Capital believed those to be the fair values. All I'm trying to understand is the mechanical point which is -- and maybe you don't know the answer to this.

In arriving at Barclays' best estimate of the fair values of those assets did the processes which you referred to take into account the prices at which assets were transferred within Barclays?

A. They took into account the traders' view of the value of the securities based on their experience and available market data.

Q. And do you know whether the traders' views about valuation included prices at which securities were transferred within Barclays?

A. No, I don't know that.

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day lag in the statement. So it's intended to represent the 22nd of September.

Q. And it looks like you have three entries there, cash, governments, and LOC; is that correct?

A. Yes.

Q. And LOC is letters of credit?

A. That's correct.

Q. What are letters of credit?

A. Well, they're essentially facilities which are drawn down, the account party being third-party banks but they take various forms.

Q. So in writing this are you counting that as an asset?

A. We have not included that in our acquisition balance sheets at the current time. But we're not distinguishing between those three items in terms of the nature of our claim and entitlement. These are viewed as -- all the three are viewed as margin which is related to the positions that were taken on. But it's margin which is held in one of three forms.

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Q. Okay. Thank you.

MR. TAMBE: I pass the witness.

\* \* \*

EXAMINATION BY

MR. WOOD:

Q. Good afternoon, Mr. Romain. Again, I'm John Wood. I'm from Hughes, Hubbard & Reed. I represent the SIPA trustee.

And just to start off I'm going to ask you some questions in your capacity as a 30(b)(6) witness regarding margin held secure exchange rate derivatives and just to speed things along why don't you go ahead and take a look at your handwritten notes, Exhibit 399A.

A. (Witness complies.)

Q. On the second page, sort of the middle of the page there, you've got an entry that's margin posted by LBI at OCC (23/9).

Do you see that?

A. Yes.

Q. Is that margin posted by LBI at the OCC on September 23rd?

A. It's from the 23rd of September statement. My understanding is that there's a

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Q. Now, when you say your claim and entitlement, does that mean a claim and entitlement from the estate?

A. I'm not sure in terms of the -- in what way we make a claim at all or against who. It's my understanding that these items we are entitled to receive under the service of the acquisition.

Q. And so why were they not included in the acquisition balance sheet?

A. The letters of credit?

Q. Yes.

A. I'm not directly involved in the proceedings but I understand there are discussions with the counterparties to those letters of credit which we don't believe has a bearing on our entitlement from a legal perspective. But when preparing financial statements we tend to be conservative and prudent in the way we do so. So if there are ongoing conversations or just more potentially disputes we would bear that in mind whether or not to include them in that balance sheet.

Q. Are the disputes you're referring

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

In Re:

Chapter 11

LEHMAN BROTHERS Case No. 08-13555(JMP)  
HOLDINGS, INC., et al., (Jointly Administered)

Debtors.

-----x

\* \* \*HIGHLY CONFIDENTIAL\* \* \*

DEPOSITION OF DAVID PETRIE

New York, New York

August 26, 2009

Reported by:

KATHY S. KLEPFER, RMR, RPR, CRR, CLR

JOB NO. 24293

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2 MR. O'BRIEN: On the phone is Tom  
3 O'Brien from Quinn Emanuel representing the  
4 Creditors Committee.

5 BY MR. TAMBE:

6 Q. Mr. Petrie, have you ever given a  
7 deposition before?

8 A. No, I have not.

9 Q. Okay. Basic rules: I'm going to ask  
10 you a series of questions about the  
11 Lehman/Barclays transaction and what role, if  
12 any, you may have played in that transaction.

13 If you have any trouble understanding  
14 my question, let me know. I'll rephrase it.  
15 You have to give your answers vocally, no nods  
16 of the head, et cetera. She's writing down  
17 everything you say, so yeses, nos. I'm happy to  
18 clarify any question.

19 By whom are you currently employed?

20 A. Barclays Capital.

21 Q. And how long have you been with  
22 BarCap?

23 A. Been with Barclays Capital since  
24 January 1998.

25 Q. Before that by whom were you employed?

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2 A. I was employed by AIG Trading Group,  
3 Fischer, Frances, Trees & Watts, and Progressive  
4 Insurance Company.

5 Q. At Barclays Capital, if you could just  
6 describe, starting in '98 to the present,  
7 broadly what your positions have been, what your  
8 duties have been?

9 A. Sure. I began working at Barclays  
10 Capital in a junior role in the repo desk. That  
11 role over several years grew into a repo trading  
12 position as well as a risk management position  
13 for the repo desk.

14 From the repo desk, as you said,  
15 broadly, the end of 2005, 2006, I joined the  
16 Barclays Bank, PLC Portfolio Group, and my  
17 responsibilities were to run the dollar  
18 portfolio; and in the beginning of 2008, I  
19 returned to the repo desk to run the repo desk  
20 for Barclays Capital in the U.S.

21 Q. So, starting in January 2008, what was  
22 your title or position at Barclays Capital?

23 A. Specifically in January, I was still  
24 working for the Barclays Bank portfolio. I did  
25 not take my responsibilities as the head of the

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2 desk until roughly April.

3 Q. And in April when you took your  
4 responsibilities for the repo desk at Barclays  
5 Capital, what was your position or title?

6 A. My title was director.

7 Q. And was that the title you held  
8 throughout 2008?

9 A. Yes.

10 Q. Focusing on that position, starting in  
11 April 2008 as a director --

12 And you were the head of the repo desk  
13 for Barclays Capital in the U.S.; is that right?

14 A. That's correct, for certain products.

15 Q. Okay.

16 A. Those products included Treasuries,  
17 agencies, and mortgages.

18 MR. SHAW: Do you mind if I ask a  
19 question to make the record clear?

20 MR. TAMBE: Sure. Go ahead.

21 MR. SHAW: Are you currently the head  
22 of the Barclays repo desk?

23 THE WITNESS: No, I am not.

24 Q. What's your current position?

25 A. I currently run the short-term

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2 interest rate desk for Barclays Capital.

3 Q. And how long have you had that  
4 position?

5 A. Since approximately October of last  
6 year.

7 Q. So it's fair to say shortly after the  
8 Lehman/Barclays transaction you took on this new  
9 position running the short-term interest rate  
10 desk?

11 A. Yes.

12 Q. And maybe we can cut through some of  
13 the questions. Starting last October, October  
14 2008, did you continue to have any involvement  
15 in the Lehman/Barclays transaction, the  
16 aftermath of that transaction?

17 A. Yes.

18 Q. If you could just briefly describe,  
19 after October 2008 what has been the nature of  
20 your involvement in the Lehman/Barclays  
21 transaction?

22 A. Assisting in the integration of the  
23 two companies, specifically to the desk.

24 Q. When you say "specifically to the  
25 desk," what desk are you referring to in the

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2 post October 2008 time period?  
3 A. The repo desk.  
4 Q. And is that something that you're  
5 still involved in in helping with the  
6 integration of the two companies?  
7 A. No.  
8 Q. Was there a period of time when you  
9 were involved in that and then that process  
10 ceased when you were no longer involved in that  
11 integration process?  
12 A. Yes.  
13 Q. Describe that time period for me.  
14 From when to when?  
15 A. I would say by approximately  
16 November/December that process ended.  
17 Q. Are you aware of a settlement  
18 agreement that was entered into in or about  
19 December 2008 concerning the Lehman/Barclays  
20 transaction?  
21 A. What settlement agreement are you  
22 speaking of?  
23 Q. Are you aware of any kind of  
24 settlement agreement between Barclays, JPMorgan,  
25 Lehman Brothers, Inc., the trustee for Lehman  
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2 A. Mark Dearlove at the time reported to  
3 Alastair Hodge, if I remember correctly.  
4 Q. And just in terms of titles or  
5 positions, what was Mr. Dearlove's position?  
6 A. Managing director.  
7 Q. At Barclays Capital?  
8 A. Yes.  
9 Q. And he was based here in New York?  
10 A. No.  
11 Q. He was based overseas?  
12 A. Mark Dearlove was based in London.  
13 Q. How about Mr. Alastair Hodges, what  
14 was his position or title?  
15 A. Alastair Hodge at the time was a  
16 managing director in charge of Prime Services, I  
17 believe.  
18 Q. And where was he based?  
19 A. London.  
20 Q. Other than being managing director,  
21 did Mr. Dearlove and Mr. Hodge have any other  
22 functionary titles, chief operating officer,  
23 chief financial officer, things like that, those  
24 types of titles?  
25 A. No.  
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2 Brothers, Inc., in or about December 2008 having  
3 to do with the transfer of collateral from  
4 Lehman through JPMorgan to Barclays?  
5 A. As you describe it, no.  
6 Q. Okay. We'll come back to that. I'm  
7 just trying to get a sense of where you fit into  
8 the various pieces of the Lehman/Barclays  
9 transaction as a whole.  
10 So let's go back to the front end. So  
11 let's go back to April 2008. You are on the  
12 repo desk at Barclays Capital, correct?  
13 A. That is correct.  
14 Q. Just describe that desk for me in  
15 terms of who you report to, who reports to you.  
16 I'm just trying to get a sense of who the  
17 individuals are who are involved with that desk.  
18 A. Sure.  
19 MR. SHAW: As of April 2008?  
20 Q. As of April 2008.  
21 A. I ran the U.S. dollar repo desk. I  
22 reported to Mark Dearlove, and --  
23 Do you want me to go further as to who  
24 Mark reported to?  
25 Q. Sure.  
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1 HIGHLY CONFIDENTIAL - D. PETRIE  
2 Q. And was there any particular  
3 department or group or unit that Mr. Dearlove  
4 and Mr. Hodge were in?  
5 A. Prime Services.  
6 Q. And were you a member of that group as  
7 well, the Prime Services Group?  
8 A. During that period, yes.  
9 Q. Yeah, I'm talking about the April 2008  
10 period. Is that still the case in September of  
11 2008, that you're in the Prime Services Unit?  
12 A. Yes.  
13 Q. And are you still reporting in  
14 September 2008 to Mr. Dearlove?  
15 A. Yes.  
16 Q. During this time period, April 2008  
17 through September 2008, who is reporting to you?  
18 A. That would be my team at the time.  
19 May I ask again for you to clarify,  
20 clarify the dates again?  
21 Q. Yes. This is April 2008 through  
22 September 2008, so the months leading up to the  
23 transaction.  
24 A. Multiple repo traders.  
25 Q. How many?  
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1 HIGHLY CONFIDENTIAL - D. PETRIE  
2 responsibilities were he was based in London and  
3 was responsible for the financing of corporate  
4 bond positions. His team was responsible for  
5 the corporate bond positions.

6 Q. On the weekend of the 13th and 14th,  
7 were you engaged in an exercise to identify  
8 assets that Barclays would not wish to purchase  
9 from Lehman if there were -- if there was a  
10 transaction?

11 A. No.

12 Q. At any time during that ten-day  
13 period, starting on the 13th through the 23rd,  
14 were you involved in such an exercise?

15 A. No.

16 Q. We'll come to an e-mail, an e-mail  
17 which makes reference to a spreadsheet of  
18 excluded assets. Does that have any meaning to  
19 you?

20 A. Yes.

21 Q. Okay. What is your understanding of  
22 the phrase "excluded assets" in this context?

23 A. In the context of the timeframe, which  
24 I believe you said from the 10th to the --

25 Q. From the 13th to the 23rd.

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2 A. -- 13th to the 23rd, as we move into a  
3 few days into that week, my sole responsibility  
4 was to facilitate removing the Fed's funding of  
5 Lehman Brothers and replace it with Barclays  
6 funding Lehman Brothers. To accomplish that  
7 would mean simply we would just take the assets  
8 that the Fed was funding.

9 Q. And the phrase "excluded assets," what  
10 meaning does that phrase have in the context of  
11 your answer?

12 MR. SHAW: Had you finished your  
13 answer?

14 A. No, I wasn't finished.

15 Q. Go ahead and finish.

16 A. To accomplish the task of only  
17 receiving the collateral that the Fed had been  
18 financing for Lehman would, by nature, include  
19 assets that weren't being financed by the Fed,  
20 which would be excluded assets.

21 Q. You completely lost me with the last  
22 part of your answer, so let me try again.

23 Later on in the week, you're involved  
24 in the process of replacing the Fed financing  
25 with the Barclays financing, is that fair to

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2 say?

3 A. Yes.

4 Q. There are assets that are securing the  
5 Fed financing, correct?

6 A. Yes.

7 Q. Are those same assets then used to  
8 secure the Barclays financing?

9 A. The intent was for Barclays to finance  
10 the assets that the Fed had been financing on  
11 Thursday of that week.

12 Q. And in connection with Barclays  
13 financing the assets that the Fed had been  
14 financing, what role, if any, did excluded  
15 assets play in that financing?

16 A. Since Lehman Brothers was financing  
17 assets outside of the Fed facility, and my only  
18 purpose that week was to remove the Fed from  
19 financing of the assets from that Thursday would  
20 imply that there were -- not just imply, there  
21 were other assets that would be excluded from  
22 the Fed replacement trade, as I would call it.

23 Q. So your understanding is the excluded  
24 assets were those assets that in fact were not  
25 securing the Fed financing?

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2 A. Yes.

3 (Exhibit 268, a document bearing Bates  
4 Nos. BCI-EX-(S)-37199 through 200, marked  
5 for identification, as of this date.)

6 (Discussion off the record.)

7 (Recess; Time Noted: 10:35 A.M.)

8 (Time Noted: 10:47 A.M.)

9 BY MR. TAMBE:

10 Q. I think before we took the break, sir,  
11 we placed in front of you a document Exhibit  
12 268. Have you looked at that?

13 A. No, I have not.

14 Q. Why don't you take a look at that and  
15 let me know when you're done.

16 (Document review.)

17 A. Okay. I've read it.

18 Q. On the first page of Exhibit 268,  
19 that's an e-mail from Mr. Rozen to you  
20 forwarding a set of e-mails. Do you see that?

21 A. Yes.

22 Q. And is it fair to say that this  
23 collection of e-mails on pages 1 and 2 of  
24 Exhibit 268 have to do with Barclays' existing  
25 exposure to Lehman on the 14th, the Sunday, 14th

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2 mortgages, do you see that?  
3 A. Yes.  
4 Q. And the numbers that appear after each  
5 of those, what are those numbers?  
6 A. Do you want me to give my best guess?  
7 Q. Your best guess, yes.  
8 MR. SHAW: Objection. Calls for  
9 speculation.  
10 A. Those numbers, 25 cents, 2.75 and  
11 2.90, were probably reflective of current market  
12 rates for repo transactions.  
13 Q. And are those references to haircuts  
14 for those types of assets; is that what you're  
15 referring to?  
16 A. No.  
17 Q. Okay. When you say they're current  
18 market rates, how are those market rates being  
19 expressed?  
20 A. A repo transaction has two parties,  
21 normally, one party that's lending collateral  
22 and another party that's lending cash. The  
23 party lending cash will receive an interest rate  
24 on that cash for the term of that loan. These  
25 appear to be rates that would be attached to  
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1 HIGHLY CONFIDENTIAL - D. PETRIE  
2 Q. Did anyone tell you about a discount  
3 in the sale of assets from Lehman to Barclays?  
4 A. No.  
5 Q. Were you ever part of any  
6 conversations or discussions about marking down  
7 the Lehman assets that were being purchased by  
8 Barclays?  
9 A. No.  
10 Q. Have you ever reviewed to this day the  
11 Asset Purchase Agreement between Lehman and  
12 Barclays?  
13 A. No.  
14 Q. Ever seen it?  
15 A. I've seen parts of it on the Internet.  
16 Q. When did you see parts of it on the  
17 Internet?  
18 A. Approximately a month, couple months  
19 ago maybe.  
20 Q. And for what purpose were you on the  
21 Internet looking at parts of the APA?  
22 A. Curiosity.  
23 Q. Was it in connection with your  
24 potential deposition in this case?  
25 A. No.  
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1 HIGHLY CONFIDENTIAL - D. PETRIE  
2 those types of loans.  
3 Q. Further down on that first page 847,  
4 there's a reference that appears to be the  
5 number 100 followed by some words. You see  
6 that?  
7 A. Yes.  
8 Q. Can you decipher that for me, please?  
9 A. "100 billion to Barclays" is what it  
10 appears to be.  
11 Q. And do you have an understanding as to  
12 what that entry means, "100 billion to  
13 Barclays"?  
14 A. No.  
15 Q. At any time during that week, the week  
16 of the 15th through the 22nd of September, did  
17 you ever discuss with anyone the overall  
18 economics of the transaction between Lehman and  
19 Barclays?  
20 A. No.  
21 MR. SHAW: Objection.  
22 Q. Do you know whether the transaction,  
23 the acquisition of these assets by Barclays from  
24 Lehman, resulted in a gain to Barclays?  
25 A. No.  
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1 HIGHLY CONFIDENTIAL - D. PETRIE  
2 Q. Other than looking at parts of the  
3 APA -- let me withdraw that. What were you  
4 curious about?  
5 A. I was curious about the enormity of  
6 the times, so it wasn't just me looking at the  
7 Lehman Brothers information. It would also be  
8 looking at overall economically where we had  
9 come from September 2000 -- September 2008 to  
10 where we are now.  
11 Q. Were there other documents that you  
12 were looking up on the Internet when you  
13 happened across the APA?  
14 A. No.  
15 Q. Let me ask you the other way. Did you  
16 go looking for the APA to see what the deal was?  
17 A. No.  
18 Q. And what is it that you remember about  
19 the parts of the APA that you saw during your  
20 Internet search?  
21 A. Simply that it was available on the  
22 Internet.  
23 Q. Okay. Have you talked to anyone about  
24 any of the terms of the APA?  
25 A. No.  
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1 HIGHLY CONFIDENTIAL - D. PETRIE  
2 A. I don't know. "Legal Opinion on  
3 repo," right, thinking out loud.  
4 Q. Right below the "Legal Opinion on  
5 Repo" you have an entry that says, I believe,  
6 "SIPIC waiver," do you see that? S-I-P-I-C  
7 waiver, do you see that?  
8 A. Yes.  
9 Q. And there's a name next to that, Ray  
10 Dorato?  
11 A. Yes.  
12 Q. At BONY, correct?  
13 A. The page says "BONY" after Ray Dorato.  
14 Q. Do you know Mr. Dorato as the general  
15 counsel of BONY?  
16 A. I don't recognize the name.  
17 Q. It states, below "SIPIC waiver," "Is  
18 Asset Purchase Agreement effective after  
19 bankruptcy?" Do you see that? Or effect --  
20 Did I read that correctly?  
21 A. You read it correctly.  
22 Q. What's that a reference to?  
23 A. I don't know.  
24 Q. Did you have a concern that there  
25 would be a default on the repo if LBI went into

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1 HIGHLY CONFIDENTIAL - D. PETRIE  
2 bankruptcy?  
3 A. In any repo transaction, whether it be  
4 small or large, my job in running the repo desk  
5 would be to continually be concerned about  
6 events of default.  
7 Q. So your best guess is you in fact were  
8 concerned about a potential default on the repo  
9 that was being contemplated with Lehman,  
10 correct?  
11 A. That is correct. However, I would  
12 like for the record to show that I was concerned  
13 about that for an event of default with any  
14 transaction that we did, and in fact, during the  
15 year 2008 and the end of 2007, there was  
16 heightened concern across Wall Street in regards  
17 to events of default. And repo desks across the  
18 street were plagued with events of default that  
19 did cause considerable losses across Wall  
20 Street, and my job was -- part of my job was to  
21 be wary of those events.  
22 Q. Had you experienced any defaults on  
23 your repo desk?  
24 A. Yes, the Barclays repo desk  
25 experienced defaults, most of them, if not all,

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1 HIGHLY CONFIDENTIAL - D. PETRIE  
2 prior to me joining the desk, meaning me running  
3 the desk in 2008.  
4 Q. I mean, if Barclays had lent money and  
5 received collateral to secure that lending,  
6 Barclays would be protected, right?  
7 A. The question you're asking is actually  
8 the answer is no. You do your best, one does  
9 their best, in running a repo desk to protect  
10 itself in the event of default of their  
11 counterparties, and to the extent that there is  
12 a default, lessons were learned quite quickly  
13 that the depth of markets for certain types of  
14 assets were quite shallow and oftentimes  
15 resulted in losses.  
16 Q. And would you try and protect yourself  
17 from a risk of default by asking for a greater  
18 haircut on the collateral that was being  
19 pledged?  
20 A. As Wall Street progressed through  
21 2006, 2007, 2008, haircut issues were addressed  
22 almost daily across all of Wall Street,  
23 including Barclays.  
24 Q. And you increased the haircuts to try  
25 and give yourself more protection, correct?

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1 HIGHLY CONFIDENTIAL - D. PETRIE  
2 A. Sometimes haircuts were increased.  
3 Sometimes haircuts were decreased.  
4 Q. And if you had concerns about the  
5 liquidity of a particular piece of collateral  
6 that was being pledged to you, you would ask for  
7 a greater haircut, correct?  
8 A. If a repo desk endeavors to borrow a  
9 particular asset, it will make a determination  
10 at the time of borrowing that asset as to what  
11 is the correct haircut, period.  
12 Q. And just cutting to the chase on the  
13 Fed repo that ultimately got replaced by the  
14 Barclays financing, Barclays provided, what, \$45  
15 billion of financing to Lehman; is that right?  
16 A. In connection with the Barclays taking  
17 the Fed out of the funding of Lehman, and at the  
18 request of the Fed, we provided funding for \$45  
19 billion for the Fed collateral for Thursday.  
20 Q. And that Fed collateral had a value  
21 greater than \$45 billion, correct?  
22 A. Yes.  
23 Q. A value of approximately \$50 billion,  
24 correct?  
25 A. I would put it below that, but yes.

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<p style="text-align: right;">Page 78</p> <p>1       HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2       Q.   That was the haircut, correct?</p> <p>3       A.   The haircut would reflect the</p> <p>4       difference between the cash that's loaned and</p> <p>5       the value of the collateral at the time of the</p> <p>6       trade being executed.</p> <p>7       Q.   And was it your understanding that if</p> <p>8       there had been a default on the repo, that</p> <p>9       Barclays would simply keep the collateral?</p> <p>10      A.   In the event of a default, if an event</p> <p>11      of default has occurred, it is normal practice</p> <p>12      for the collateral that had been collateralizing</p> <p>13      the loan to then revert to the lender of cash.</p> <p>14      Q.   Just so I understand what you mean by</p> <p>15      that, if Barclays is the lender and Barclays</p> <p>16      has, say, 50 billion of collateral, and Lehman</p> <p>17      defaults, Barclays gets to keep the collateral;</p> <p>18      is that what you're saying?</p> <p>19      A.   Yes.</p> <p>20      Q.   Were you concerned at all that if</p> <p>21      Lehman's default was the result of a bankruptcy,</p> <p>22      Barclays may not be able to keep all of the</p> <p>23      collateral?</p> <p>24      A.   No.</p> <p>25      Q.   Do you remember discussing that with</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 79</p> <p>1       HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2       anyone during that week?</p> <p>3       MR. SHAW: Again, I'll --</p> <p>4       Q.   Other than lawyers?</p> <p>5       A.   No.</p> <p>6       Q.   Next page, 851, towards the bottom</p> <p>7       third of the page you have a line that begins</p> <p>8       "excluded asset," do you see that?</p> <p>9       A.   Yes.</p> <p>10      Q.   And the calculation that appears</p> <p>11      there, do you see that?</p> <p>12      A.   Yes.</p> <p>13      Q.   Can you, one, decipher that language</p> <p>14      and, two, explain what you mean by that?</p> <p>15      A.   May I take a moment to read the whole</p> <p>16      page, please?</p> <p>17      Q.   Sure. Absolutely. Let me know when</p> <p>18      you're done.</p> <p>19      A.   Okay. Your question again, please?</p> <p>20      (Record read.)</p> <p>21      A.   Excluded asset says 71 billion; 10</p> <p>22      something funded, meaning I can't read that,</p> <p>23      that word; 61 billion balance, and I don't know</p> <p>24      what that math is pertaining to.</p> <p>25      Q.   Flip down a couple more pages to page</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 80</p> <p>1       HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2       853. There are details of notes on page 853,</p> <p>3       854 over onto 855. I'm not sure if they all go</p> <p>4       together, but if you could look at those three</p> <p>5       pages and just read those notes to yourself.</p> <p>6       Let me know when you're done and I'll ask you</p> <p>7       some questions.</p> <p>8       (Document review.)</p> <p>9       A.   I've looked them over.</p> <p>10      Q.   One, do these three pages, should they</p> <p>11      be read together as a set of notes about a</p> <p>12      particular meeting or event?</p> <p>13      A.   Yes. The date's incorrect, it</p> <p>14      appears.</p> <p>15      Q.   And the date that appears on page 853</p> <p>16      is 9/17/08, which was the Wednesday?</p> <p>17      A.   Right. This meeting occurred on</p> <p>18      Tuesday.</p> <p>19      Q.   And this meeting that you're referring</p> <p>20      to is a meeting with the Fed; is that right?</p> <p>21      A.   Yes. It's physically at the Fed.</p> <p>22      Q.   And you attended that meeting?</p> <p>23      A.   Yes.</p> <p>24      Q.   How long did the meeting last?</p> <p>25      A.   Approximately two hours.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 81</p> <p>1       HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2       Q.   And just -- let's step away from the</p> <p>3       notes for a second. Just describe generally</p> <p>4       what was discussed in the meeting.</p> <p>5       A.   The Fed had asked Barclays to step</p> <p>6       into the funding of Lehman and to take the Fed</p> <p>7       out of the funding of Lehman. That was the sole</p> <p>8       purpose of the meeting.</p> <p>9       Q.   And if I could just run down your</p> <p>10      notes in terms of who attended that meeting. I</p> <p>11      think you have a list of names at the top of</p> <p>12      page 853. I can't read any of those names.</p> <p>13      A.   Ian, Gerard, Elena.</p> <p>14      Q.   Let me stop there for a second. Ian</p> <p>15      and Gerard, that would Ian Lowitt and Gerard</p> <p>16      Reilly from Lehman?</p> <p>17      A.   Gerard LaRocca.</p> <p>18      Q.   Oh, Gerard LaRocca. And Ian?</p> <p>19      A.   Ian Lowitt.</p> <p>20      Q.   Elena, who is Elena?</p> <p>21      A.   Matrullo.</p> <p>22      Q.   From?</p> <p>23      A.   Our Credit Department.</p> <p>24      Do you want me to continue?</p> <p>25      Q.   Yes, please.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

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2 A. Ian, Alan, Art Citassamo.

3 Q. Who are those three individuals?

4 A. Ian Pryor, also from Credit; Alan  
5 Kaplan from Barclays Legal; Art Citassamo, a  
6 senior representative from Bank of New York.

7 Q. And then the names that appear down  
8 the -- I don't know, I'm not sure if they're  
9 columns or descriptions. If you move over from  
10 those names, there's another set of entries.  
11 What are those?

12 A. Lucinda.

13 Q. Lucinda who?

14 A. Brickler I believe is how you  
15 pronounce her last name.

16 Q. From Barclays?

17 A. No, Lucinda -- these are now  
18 individuals representatives attending the  
19 meeting from the Fed.

20 So Lucinda. Next to her name is  
21 "payments." Andrew, I can't decipher his last  
22 name, but it says next to it "CCR."

23 Q. And what does "CCR" stand for?

24 A. I don't know.

25 Q. Okay.

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1 HIGHLY CONFIDENTIAL - D. PETRIE

2 A. Then I read Donna from the Markets  
3 Group. And it appears to be Jan Byce, as best I  
4 can read my writing, and then Aaron Klein, but  
5 next to both of their names I have counsel.

6 Rick -- I can't pronounce his last  
7 name. I can't read his last name.

8 Q. Okay.

9 A. Next to his name I have "credit," and  
10 then below that is the name Chris Burke, in  
11 parentheses, "coming."

12 Q. And who is Chris Burke?

13 A. Chris Burke is a senior person that  
14 works at the Fed.

15 Q. You have a series of items below. If  
16 you could just decipher those.

17 A. Number 1, "Explain our undertaking of  
18 Fed's" -- I can't read that next word -- "on  
19 replacing LBI with BCI to assume 47 billion."  
20 I'm sorry, I do know what that word

21 says.

22 Q. Okay.

23 A. Number 1, "Explain our undertaking of  
24 Fed's focus on replacing LBI with BCI to assume  
25 47 billion."

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1 HIGHLY CONFIDENTIAL - D. PETRIE

2 Number 2, "Half collateral DTC  
3 eligible/half Fed wire" -- I can't make out that  
4 word.

5 Q. Next item?

6 A. Number 3, "Intention tomorrow to  
7 reverse all collateral."

8 Q. Let me just ask you about that entry  
9 and your statement about the date when this  
10 meeting took place. The meeting took place on  
11 Tuesday. Was there an intention to reverse all  
12 the collateral on the Wednesday?

13 A. No.

14 Q. The reversal of the collateral took  
15 place on Thursday, right?

16 A. That's correct.

17 Q. Okay.

18 A. Number 4, "Offering of day loan."  
19 Number 5, "We take all collateral to PDCF."  
20 Number 6, "Over two-week period put to street."

21 Q. So those last two items, 5, "We take  
22 all collateral to PDCF," what did you mean by  
23 that?

24 A. In the undertaking/at the behest of  
25 the Fed, Barclays' funding Lehman Brothers for

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2 the collateral that the Fed was funding on  
3 Thursday. Barclays received assurances from the  
4 Fed that we would be able to take that  
5 collateral and fund it through the PDCF, the  
6 Primary Dealer Credit Facility, which is what  
7 addresses point number 5.

8 Q. And just to drill down that further,  
9 whether or not that collateral otherwise  
10 satisfied PDCF eligibility, Barclays was seeking  
11 from the Fed an understanding that all of this  
12 collateral would in fact be PDCF-eligible, is  
13 that fair?

14 A. Yes.

15 Q. Okay. The next point?

16 A. Number 6, "Over two-week period put to  
17 street."

18 Q. What do you mean by that?

19 A. That Barclays, upon completion of what  
20 I call the Fed trade, would make every effort to  
21 self-finance the received collateral without the  
22 assistance of the Fed facilities.

23 Q. Just so I understand how 5 and 6 may  
24 relate to each other, for a period of two weeks,  
25 for up to a period of two weeks, you could use

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the PDCF as a financing facility with this collateral. After that two-week period, you would start getting financing for that collateral from the street or otherwise dispose of that collateral, is that fair?

A. No.

Q. Okay. How do 5 and 6 work together, if at all?

A. To be precise, on day one, upon receiving the collateral, we had assurances from the Fed that, should we need to fund the collateral, we could do so through the PDCF, all the while working towards self-financing.

Q. What's the two-week period? Is that a limitation or a requirement that you become self-financing with respect to that collateral in two weeks?

A. The discussion at the Fed was a two-way discussion, and I felt comfortable that I told the Fed that within a couple of weeks we could finance this collateral. It was not a directive of the Fed. It was my estimation that I explained to the Fed.

Q. Did Barclays in fact finance that

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collateral to the street after the transaction, so on and after the 22nd of September?

A. Is your question the entire amount of collateral or portions of the collateral?

Q. Portions of it.

A. On day one of receiving the collateral, we started financing parts of that collateral with the street.

Q. Do you know of any efforts to sell the collateral?

A. No.

Q. Do you know if there have been any sales of the collateral?

A. No.

Q. If you look at the -- I'm sorry, let's go on, items 7, 8 and 9 that appear on page 853. So let's carry on. If you could carry on deciphering what your words are --

A. Oh, just read it?

Q. -- and then we can talk about what you meant by some of these entries.

A. Sure. Number 7, "Discussing reserve impact of" something -- I can't decipher the word at this point -- "TSLF adding 20 billion

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total."

Number 8, "Debit cap is 54 billion according to Lucinda." Below that in parentheses, "13 billion," question mark, question mark, "with Gerard." 9, "JPM" something "pledge."

Q. Okay. If you can roll over to page 856, and looking at 856 and 857 together, if you could first confirm for me whether those two sets of notes all relate to the same event or meeting?

A. Yes, they appear to be.

Q. And they reference a DTC meeting; is that right?

A. That's correct.

Q. And when did the DTC meeting take place?

A. Upon leaving the Federal Reserve on Tuesday evening, several of us walked directly to the DTC to meet with them.

Q. And what was the purpose of that meeting?

A. Given that the Fed had requested Barclays to step into the funding of Lehman

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Brothers, and it being a sizable trade, assets move over or assets -- assets move over the DTC wire. So we were engaging DTC to let them know what we were planning at the behest of the Fed and to come up with a plan as to how to best accomplish that.

Q. How long did that meeting last?

A. Approximately one hour.

Q. And you identified on page 856 at the top, you've got the I guess the two DTC people you met with, Donald Donahue and Grace Montal?

A. Isaac, I believe.

Q. Isaac Montal.

Next section down, there appear to be -- well, why don't you decipher what the next three lines are. It begins at "250MM" on the left-hand side?

A. Would you like me to read them to you?

Q. If you could just first read them and then tell me what you mean by those entries.

A. It says, "250 million, 10,000 employees, licenses, 75 billion in assets. 1. Corporate Headquarters; 2. Data centers and more real estate. 60 billion in assets. 47

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<p style="text-align: right;">Page 110</p> <p>1       HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2       Q. Do you have an understanding as to how</p> <p>3 these excluded mortgage assets were identified?</p> <p>4       A. No.</p> <p>5       (Exhibit 274, a document bearing Bates</p> <p>6 Nos. BCI-EX-(S)-38010 through 38013, marked</p> <p>7 for identification, as of this date.)</p> <p>8       Q. I've handed you a four-page document</p> <p>9 marked Exhibit 274. Please take a moment to go</p> <p>10 through the document and I'll ask you about it,</p> <p>11 starting with the last e-mail, which is on page</p> <p>12 2 over to 3 over to 4.</p> <p>13       (Document review.)</p> <p>14       A. I've read the last e-mail in the</p> <p>15 string.</p> <p>16       Q. It's an e-mail from Teri Scott to</p> <p>17 Jonathan Stone and several other people. You're</p> <p>18 CC'd on that e-mail, do you see that?</p> <p>19       A. Yes.</p> <p>20       Q. Do you recognize this as a summary of</p> <p>21 the transactions that were done on the 18th of</p> <p>22 September?</p> <p>23       A. I recognize it as Teri Scott's</p> <p>24 summary, yes.</p> <p>25       Q. And you read his summary, correct, or</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 111</p> <p>1       HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 her summary?</p> <p>3       A. I've just now read it.</p> <p>4       Q. And is it consistent with your</p> <p>5 recollection of those transactions?</p> <p>6       A. It is consistent with my recollection,</p> <p>7 although parts of it I wasn't privy to previous</p> <p>8 to receiving this e-mail.</p> <p>9       Q. What parts of it were you not privy to</p> <p>10 prior to receiving this e-mail?</p> <p>11       A. On paragraph 1, in regards to the</p> <p>12 tri-party and rehypothecation issues.</p> <p>13       Q. Anything else?</p> <p>14       A. In bold, the, "A list of Cusips to be</p> <p>15 excluded has been provided to ensure collateral</p> <p>16 we are not purchasing is excluded in this</p> <p>17 matter" is something I'd be ignorant of.</p> <p>18       Q. And just so I understand your answer,</p> <p>19 you were not aware until you saw this e-mail</p> <p>20 that a list of Cusips to be excluded had been</p> <p>21 provided to ensure the collateral that Barclays</p> <p>22 was not purchasing was excluded from the</p> <p>23 transfer, correct?</p> <p>24       A. Well, as noted before, we only wanted</p> <p>25 to take the Fed collateral, and the way that she</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 112</p> <p>1       HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 writes this is worded a bit differently than my</p> <p>3 understanding, but I can't speak for Teri Scott</p> <p>4 and how -- what she meant by that statement.</p> <p>5       Q. Go to the next substantive e-mail in</p> <p>6 this chain. It's the e-mail that begins at the</p> <p>7 bottom of page 1 over to page 2 from John Haley</p> <p>8 to Teri Scott and others. Have you had a chance</p> <p>9 to look at that e-mail?</p> <p>10       A. I'll read it right now.</p> <p>11       Q. Okay.</p> <p>12       (Document review.)</p> <p>13       A. Okay.</p> <p>14       Q. You'll see in John Haley's e-mail, the</p> <p>15 description that begins on page 1, carries over</p> <p>16 on to page 2. Do you see that, the various</p> <p>17 items that are listed there?</p> <p>18       A. Yes, I do.</p> <p>19       Q. Is it your understanding that,</p> <p>20 following the repo on the 18th, on the morning</p> <p>21 of the 19th, that was in fact the position of</p> <p>22 the collateral and cash held by Barclays on the</p> <p>23 Barclays repo?</p> <p>24       A. I can see that John Haley has produced</p> <p>25 an e-mail to attempt to break down the types of</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 113</p> <p>1       HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 collateral that we received.</p> <p>3       Q. Is that consistent with your</p> <p>4 recollection of what happened that evening into</p> <p>5 the Friday?</p> <p>6       A. My recollection is in dollar terms.</p> <p>7 We received 42.7-ish billion dollars worth of</p> <p>8 collateral and got \$7 billion in cash to</p> <p>9 complete the Fed repo trade. This breakdown</p> <p>10 from John Haley is something I wouldn't be able</p> <p>11 to comment on. I don't know if it's correct or</p> <p>12 not.</p> <p>13       Q. The very first e-mail at the top of</p> <p>14 page 1, the short e-mail, I don't know if you've</p> <p>15 read it. Have you?</p> <p>16       A. Not yet.</p> <p>17       Q. Just read it and let me know when</p> <p>18 you're done.</p> <p>19       (Document review.)</p> <p>20       A. I've read it.</p> <p>21       Q. That's another e-mail from Teri Scott,</p> <p>22 do you see that?</p> <p>23       A. Yes.</p> <p>24       Q. In the middle of her e-mail, she</p> <p>25 writes, "Ops. had to pull all the collateral</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

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1 HIGHLY CONFIDENTIAL - D. PETRIE  
2 allocated to London, and we're therefore over  
3 our unsecured limit by \$1.9 billion." Do you  
4 see that?  
5 A. I see that.  
6 Q. Do you have an understanding as to  
7 what that means?  
8 A. No.  
9 Q. Do you have any understanding as to  
10 what the phrase "collateral allocated to London"  
11 means?  
12 A. No.  
13 Q. The next sentence reads, "Part of this  
14 overage can also be attributed to EFG, as they  
15 were unsecured by 1 billion." Do you see that?  
16 A. Yes.  
17 Q. What does EFG mean?  
18 A. Equity Finance Group.  
19 Q. And do you have an understanding as to  
20 what this sentence means?  
21 A. Yes. During the normal course of  
22 business, there can be, especially during this  
23 volatile time period in September, there can be  
24 large valuations intraday in regards to the  
25 value of collateral, and I take this sentence as  
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1 HIGHLY CONFIDENTIAL - D. PETRIE  
2 to meaning that, due to there being a valuation  
3 change in collateral normally held by EFG, that  
4 they needed additional billion-dollar loan from  
5 PLC, which wouldn't be unusual.  
6 Q. When we were talking earlier about  
7 John Haley's e-mail at the bottom of page 1 over  
8 to page 2, you said that you thought about the  
9 repo in some dollar terms, and you said \$42  
10 billion and change in collateral, do you  
11 remember that?  
12 A. Yes.  
13 Q. Okay. That \$42 billion in change in  
14 collateral value, what is your --  
15 A. You said 42 billion change?  
16 Q. \$42 billion and change. It's 42 point  
17 something, right?  
18 A. Oh, okay. Yes.  
19 Q. Where did that value come from, the  
20 value that you have in your mind?  
21 A. The value of 42.7, approximately,  
22 \$42.7 billion would have come from, as assets  
23 moved from JPMorgan to the Bank of New York  
24 during the Fed trade, the valuations would come  
25 from the Bank of New York.  
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1 HIGHLY CONFIDENTIAL - D. PETRIE  
2 Q. So when you think of this \$42.7  
3 billion number, you're thinking of a Bank of New  
4 York valuation number?  
5 A. Yes, and also thinking of it in terms  
6 of, like I just mentioned, that there's a  
7 volatile -- we were in volatile markets, so the  
8 approximate value of 42.7 is a snapshot in time  
9 that could go up or down, you know, minute by  
10 minute as markets changed.  
11 Q. I assume when this repo was done on  
12 the 18th, at some point on the 19th Barclays  
13 received a report from BONY as to the value of  
14 the collateral; is that correct?  
15 MR. SHAW: Objection. Foundation.  
16 A. You're asking me, once again, am I  
17 assuming that there was a report?  
18 Q. No, I'm asking you do you know whether  
19 there was a report?  
20 A. There were attempts of reports to be  
21 sent by Bank of New York to Barclays for  
22 valuations of securities, but as mentioned,  
23 those values would be during very volatile  
24 markets and pricings could have been going up or  
25 down during minutes and hours post-transaction.  
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1 HIGHLY CONFIDENTIAL - D. PETRIE  
2 Q. I handed you a document that was  
3 previously marked as Exhibit 157A, a two-page  
4 document. Let me know when you're done  
5 reviewing it.  
6 (Document review.)  
7 A. I've read it.  
8 Q. You're not shown as a recipient or a  
9 sender of any of these e-mails. I want to ask  
10 you about the e-mail on the first page from  
11 David Aronow to Paolo Tonucci, 19th of  
12 September, 12:47. Do you see that?  
13 A. Yes, I see it.  
14 Q. David Aronow states in that e-mail,  
15 "Barclays' Operations Team has recalculated the  
16 value of the collateral that they received from  
17 us last night and they are more than fully  
18 collateralized, including the haircuts applied."  
19 Do you see that?  
20 A. I read that.  
21 Q. Did you have any discussions with  
22 David Aronow about recalculating the value of  
23 the collateral Barclays received from BONY?  
24 A. No.  
25 Q. Had you expressed any views to David  
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<p style="text-align: right;">Page 118</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE 2 Aronow or to anyone else at Lehman about whether 3 you believed that Barclays was fully 4 collateralized as of Friday, the 19th of 5 September? 6 A. No. 7 Q. Was that your understanding, that you 8 were fully collateralized on the 19th of 9 September? 10 A. I believed that we were, including the 11 \$7 billion. 12 Q. And did you have any discussions with 13 anyone at Lehman about standing down with the 14 transfer of any further movements of collateral 15 on that Friday, the 19th of September? 16 A. I do not understand what he means by 17 "stand down." 18 Q. Putting aside the collateral that 19 moved over on the 18th in connection with the 20 Barclays repo, were you aware of any movements 21 of collateral that were taking place on Friday, 22 the 19th? 23 A. I was aware there were movements of 24 collateral, but for what purposes I'm not aware. 25 Q. Did anyone say to you on the 19th of TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 119</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE 2 September or over the weekend of the 20th or 3 21st that, other than the Fed repo collateral, 4 other collateral had to be identified and moved 5 into Barclays by Lehman? 6 A. No. 7 Q. And did you ever have a view on the 8 19th and thereafter that the collateral that 9 Barclays received from the Fed repo was not the 10 collateral that Barclays intended to purchase 11 from Lehman? 12 MR. SHAW: Objection. Vague as to 13 time. 14 You say "intended to purchase from 15 Lehman." 16 A. Can you repeat the question, please? 17 (Record read.) 18 A. I wasn't part of that -- party to the 19 Asset Purchase Agreement. I was only tasked 20 with one purpose, which was to receive the Fed 21 collateral to take the Fed out of the repo 22 trade, and it was clear that we did not receive 23 in its entirety the repo that had been at the 24 Fed from Lehman Brothers and given the 25 difficulties we have discussed already. So it TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 120</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE 2 was clear to me that we had received collateral 3 to collateralize our loan that would have 4 included assets that were not part of the 5 original Fed trade on Thursday. 6 Q. Are you aware of any effort to try and 7 transfer to Barclays that collateral which was 8 part of the Fed repo but which wasn't 9 transferred to Barclays? 10 A. I know I went into the office on 11 Friday morning expecting to try to complete the 12 Fed repo transfer and that there was collateral 13 that had moved, but for what that collateral was 14 satisfying, I don't know. 15 Q. Let's go back to the notes, 272. Page 16 862, which is the next page after the one we had 17 last discussed, if you could help us decipher 18 what the words that appear on that page. If you 19 could just read them out and we can talk about 20 what you're writing about. 21 A. It says, number 1, "PBN customer 22 finance." Below that says, "Racers are RV with 23 LCPI," and the name James Walker on the same 24 line. Below that says, "Trust structures. LCPI 25 repo'd LBI. LBI repo'd to street. PDCF 20 TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 121</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE 2 percent on racers. Loans are still on LCPI. 3 Trust is funded by ABCP." Then the name Martin 4 Kelly. 5 Q. Okay. So let's start unpackaging the 6 that. The "PBN customer finance" that appears 7 in the first line, "PB" is prime brokerage or 8 prime brokering? 9 A. That would seem reasonable. 10 Q. Okay. And racers, the reference to 11 racers, what are racers? 12 A. I believe racers are a 13 securitized-type product that had been issued 14 off of another entity, not LBI, so Lehman 15 Brothers entity. 16 Q. Is not the LCPI Lehman Commercial 17 Paper, Inc.? 18 A. To be honest with you, LCPI, you've 19 just told me what it is. I wouldn't have been 20 able to explain that to you. 21 Q. Okay. And so these are some kind of 22 structured security, and you say the "racers are 23 RV with LCPI." What did you mean by that? 24 A. Racers RV stands for reverse repo. 25 Q. Okay. TSG Reporting - Worldwide (877) 702-9580</p>

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<p>1       HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2       Q.   Were you aware of a BONY valuation for</p> <p>3       that collateral as of Thursday night, the values</p> <p>4       as of Thursday night, of \$45 billion?</p> <p>5       A.   No.</p> <p>6       Q.   Are you aware of any valuations by</p> <p>7       BONY, any specific valuations by BONY for that</p> <p>8       Fed repo collateral?</p> <p>9       A.   Am I aware of any specific</p> <p>10      valuations --</p> <p>11      Q.   By BONY.</p> <p>12      A.   -- by BONY?</p> <p>13      BONY, as our custodian, is the one</p> <p>14      that values the collateral.</p> <p>15      Q.   Are you aware of any specific values</p> <p>16      put by BONY on the Fed repo collateral that was</p> <p>17      transferred over on the 18th?</p> <p>18      A.   No.</p> <p>19      Q.   Would that information not have</p> <p>20      crossed your desk on the 19th, the 20th, the</p> <p>21      21st?</p> <p>22      A.   Your question said "specific</p> <p>23      valuations." My desk, as mentioned in the very</p> <p>24      beginning of the testimony, like any other repo</p> <p>25      desk on Wall Street, is to finance the firm.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1       HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2       So, as collateral enters Barclays, my group and</p> <p>3       myself's number one job is to finance it.</p> <p>4       So, to the extent that the value of</p> <p>5       the collateral held by Barclays Capital went up,</p> <p>6       I would then raise, or my group would raise,</p> <p>7       cash to meet that obligation in financing it.</p> <p>8       Q.   I've handed you a multi-page document</p> <p>9       previously marked as Exhibit 83B. Take a moment</p> <p>10      to look at the document and the spreadsheet</p> <p>11      attached in the document. Let me know when</p> <p>12      you're done.</p> <p>13      (Document read.)</p> <p>14      A.   I've read it.</p> <p>15      Q.   Have you seen this document before</p> <p>16      today?</p> <p>17      A.   No.</p> <p>18      Q.   Do you have any understanding of the</p> <p>19      information that's contained in the spreadsheet</p> <p>20      attached to this Exhibit 83B?</p> <p>21      A.   Yes, I have some understanding.</p> <p>22      Q.   What's your understanding of what that</p> <p>23      spreadsheet is?</p> <p>24      A.   Given that Barclays Capital had</p> <p>25      received many different asset classes of</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1       HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2       securities from Lehman Brothers in taking the</p> <p>3       Fed out of its trade, there was an attempt by</p> <p>4       Stephen Sell to have those securities under the</p> <p>5       watchful eye of the relevant trading desks to</p> <p>6       manage the risk associated with those different</p> <p>7       asset classes would be -- you asked my opinion.</p> <p>8       I can't speak for Stephen Sell, but --</p> <p>9       I haven't seen the document, but that's my</p> <p>10      opinion.</p> <p>11      Q.   Do you see the two bullet points on</p> <p>12      the first page of the exhibit, Exhibit 83B, the</p> <p>13      first bullet point reads, "We should book all</p> <p>14      positions from the Lehman financing facility to</p> <p>15      BCI (45 billion securities - see attached</p> <p>16      file)."</p> <p>17      Do you see that?</p> <p>18      MR. SHAW: Objection.</p> <p>19      Mischaracterizes the document.</p> <p>20      Q.   Do you see that bullet point?</p> <p>21      MR. SHAW: Objection.</p> <p>22      Mischaracterizes the document.</p> <p>23      MR. TAMBE: Whether he sees the</p> <p>24      document?</p> <p>25      MR. SHAW: The document you described</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1       HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2       does not exist because you left out a</p> <p>3       critical piece of information.</p> <p>4       Q.   The first bullet point on page 1 of</p> <p>5       Exhibit 83B, do you see that first bullet point?</p> <p>6       A.   I see the first bullet point.</p> <p>7       Q.   This parentheses it "45 billion</p> <p>8       securities - see attached file," do you see</p> <p>9       that?</p> <p>10      MR. SHAW: Objection.</p> <p>11      Mischaracterizes the document.</p> <p>12      MR. TAMBE: How does that</p> <p>13      mischaracterize the document?</p> <p>14      MR. SHAW: You have left out the</p> <p>15      little mark that generally indicates --</p> <p>16      well, I know what it generally indicates to</p> <p>17      me and what I understand it is</p> <p>18      approximately.</p> <p>19      Q.   Okay. "Approximately \$45 billion in</p> <p>20      securities," do you see that?</p> <p>21      A.   Yes, I see that --</p> <p>22      Q.   The squiggly line?</p> <p>23      A.   I would read it, "We should book all</p> <p>24      positions from the Lehman financing facility to</p> <p>25      BCI (approximately 45 billion securities - see</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>



<p style="text-align: right;">Page 150</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 attached file)."</p> <p>3 Q. That's the file we were talking about</p> <p>4 before, the spreadsheet that's attached to the</p> <p>5 cover sheet?</p> <p>6 A. The file that you said -- yes, the</p> <p>7 spreadsheet that I haven't seen before until</p> <p>8 now, and if it adds up to 45, approximately 45</p> <p>9 billion, then, okay, then that's the file we</p> <p>10 were talking about.</p> <p>11 Q. And the next bullet point states, "We</p> <p>12 should book based on the price within the BONY</p> <p>13 file, at least for Day 1." Do you see that?</p> <p>14 A. I see that statement.</p> <p>15 Q. And taking those two bullet points</p> <p>16 together, do you understand that as Mr. Sell</p> <p>17 saying that the BONY prices were used for</p> <p>18 booking these trades into the Barclays system,</p> <p>19 at least for Day 1?</p> <p>20 MR. SHAW: Objection.</p> <p>21 Mischaracterizes the document.</p> <p>22 A. I don't know what Stephen Sell was</p> <p>23 trying -- what he was saying here.</p> <p>24 Q. What do you understand those two</p> <p>25 bullet points to mean there?</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 151</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 A. In Barclays' books and records, you</p> <p>3 have to characterize these assets being held in</p> <p>4 a price that is a starting price from whence you</p> <p>5 held them.</p> <p>6 Q. Okay. And you understand this e-mail</p> <p>7 as saying that those prices should be the BONY</p> <p>8 prices, correct?</p> <p>9 A. I can't speak for Stephen Sell.</p> <p>10 Q. That's what the e-mail said. Do you</p> <p>11 read that? Do you understand the e-mail as</p> <p>12 saying that?</p> <p>13 A. It appears that's what he's saying.</p> <p>14 Q. And do you know, based on how these</p> <p>15 trades were booked to the Barclays system,</p> <p>16 whether they in fact were booked to the BONY</p> <p>17 prices on day one?</p> <p>18 A. I don't know.</p> <p>19 Q. Who would know that?</p> <p>20 A. I would suggest speaking to Stephen</p> <p>21 Sell.</p> <p>22 Q. You said many, many times today that</p> <p>23 there was a lot of volatility that week. If it</p> <p>24 was up to you, what -- what day's prices should</p> <p>25 have been used to book these assets when they</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 152</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 were booked in Barclays' books?</p> <p>3 MR. SHAW: Objection to form.</p> <p>4 A. If it was up to me, at what prices</p> <p>5 should the assets that came over from the Fed</p> <p>6 repo trade been booked at; am I characterizing</p> <p>7 your question correctly?</p> <p>8 Q. Not quite. What day's prices would</p> <p>9 you have used?</p> <p>10 MR. SHAW: Objection to form.</p> <p>11 Q. Thursday's prices? Friday's prices?</p> <p>12 Monday's price?</p> <p>13 MR. SHAW: Objection to form.</p> <p>14 A. I'm not an accountant, so I wouldn't</p> <p>15 know what day to use.</p> <p>16 Q. But you run the repo desk, right?</p> <p>17 A. Right, for financing --</p> <p>18 Q. You need to know what you have on your</p> <p>19 assets so you know what you financed, right?</p> <p>20 You need to have some sense of what prices</p> <p>21 you're going to use?</p> <p>22 A. For financing the positions, it would</p> <p>23 be current market value.</p> <p>24 Q. So you'd use the prices of the day you</p> <p>25 got the assets into your books?</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 153</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 MR. SHAW: Objection to form.</p> <p>3 A. Buying a security and financing a</p> <p>4 security, the price that you paid for the</p> <p>5 security versus where you finance that security</p> <p>6 can differ to the extent of market volatility.</p> <p>7 Q. A lot of things can differ, okay? Do</p> <p>8 you have any procedures or rules that you follow</p> <p>9 when you get securities and you lend money? Are</p> <p>10 you required to follow any particular pricing</p> <p>11 convention or methodology?</p> <p>12 MR. SHAW: Objection to form,</p> <p>13 foundation, and vague as to who the "you" is</p> <p>14 in that question.</p> <p>15 Q. You, Mr. Petrie. Is there a problem</p> <p>16 with "you"? Is it unclear to you as to who the</p> <p>17 "you" is in my question?</p> <p>18 A. I'm glad you clarified it, meaning my</p> <p>19 attorney.</p> <p>20 In running a repo desk, every day you</p> <p>21 come into a new day where the market has moved</p> <p>22 up or down, and you use, you can only use,</p> <p>23 whatever market value of the securities that are</p> <p>24 within Barclays Capital to raise cash.</p> <p>25 Q. And where Barclays is using a</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 154</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE 2 tri-party arrangement and there's a custodian 3 and the custodian has assigned prices to those 4 securities, are you required to use those 5 prices? 6 MR. SHAW: Objection to form. 7 Foundation. 8 A. Bank of New York, being our custodian, 9 prices our securities, and when we lend those 10 securities, the value that we lend those 11 securities at is the money that we're able to 12 borrow to finance the firm. 13 Q. And whose values do you use, Bank of 14 New York's values or your values? 15 A. Bank of New York's. 16 Q. Thank you. I have placed before you a 17 two-page document previously marked Exhibit 18 147A. Take a moment to review the document. 19 Let me know when you're done. 20 (Document review.) 21 A. Okay. I've finished it. 22 Q. Have you seen this document before 23 today? 24 A. No. 25 Q. There's a reference in the first TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 155</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE 2 e-mail at the top of page 1 to \$1.9 billion of 3 additional collateral. Do you see that? 4 A. Yes, I see it. 5 Q. Do you recall having any discussions 6 with anyone on or after the 19th of September 7 about \$1.9 billion of additional collateral? 8 A. No. 9 Q. I have handed you a document marked 10 144A. Take a moment to look at that document. 11 Let me know when you're done. 12 A. I'm finished. 13 Q. There's a forward of an e-mail on this 14 exhibit, and the e-mail is from Marty Malloy to 15 Gerard LaRocca and others. Do you see that? 16 A. Yes. 17 Q. Okay. Who's Marty Malloy? 18 A. Marty Malloy is a managing director in 19 the Collateralized Finance Group. 20 Q. And in terms of seniority, how does he 21 fit in with Mr. Dearlove and others we have 22 discussed? 23 A. He's a senior member of the Barclays 24 team, so relatively on par. 25 Q. There's a CC shown on his e-mail, TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 156</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE 2 Jacqui Stanley-Johns. Do you see that? 3 A. I see that. 4 Q. Is that a name you're familiar with? 5 A. No. 6 Q. And you see the subject line of this 7 e-mail, "Totals For the Fed Facility 8 Collateral," do you see that? 9 A. I see that. 10 Q. And are you familiar with this 11 calculation that appears below in his e-mail? 12 A. No. 13 Q. You haven't seen that before today? 14 A. No, I have not. 15 MR. TAMBE: Let me take a short break. 16 (Recess; Time Noted: 3:22 P.M.) 17 (Time Noted: 3:31 P.M.) 18 BY MR. TAMBE: 19 Q. Mr. Petrie, were you involved at all 20 in helping Barclays' auditors account for the 21 value of the securities that were purchased in 22 the Lehman/Barclays transaction? 23 A. No. 24 Q. I'm showing you what's previously been 25 marked as Exhibit 86B. Just take a look at it TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 157</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE 2 and tell me if you've ever seen that document 3 before. 4 (Document review.) 5 A. No, I have not. 6 Q. There's a column on page 1 of Exhibit 7 86B, column F, titled "PCG Liquidity Value." Do 8 you see that? 9 A. Yes, I see it. 10 Q. And do those words have any meaning to 11 you? 12 A. Yes. 13 Q. What is your understanding of what 14 those words mean? 15 A. Product Control Group liquidity value. 16 Q. And do you have an understanding as to 17 the calculations that are being done in that 18 column on page 1 of 86B? 19 A. No, I do not. 20 Q. I've handed you a one-page document 21 previously marked as 87B. Have you seen this 22 document before today? 23 A. No. 24 Q. There's a column F on this document 25 87B entitled "MV w Liquidity," do you see that? TSG Reporting - Worldwide (877) 702-9580</p>

1  
2 UNITED STATES BANKRUPTCY COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS

Case No. 08-13555(JMP)

8 HOLDINGS, INC., et al., (Jointly Administered)

9  
10 Debtors.  
11  
12  
13  
14 -----x

15 DEPOSITION OF MARTY MALLOY

16 New York, New York

17 March 1, 2010  
18  
19  
20  
21  
22

23 Reported by:

24 KATHY S. KLEPFER, RMR, RPR, CRR, CLR

25 JOB NO. 28684

Page 6

Page 7

1 M. Malloy  
2 prefer, if there's a question pending, that we  
3 get an answer to the question before we take the  
4 break. But beyond that, just speak right up if  
5 you want to take break.

6 I have a habit of speaking quickly,  
7 and if I start to speed up too much, and that  
8 refers to rule number 1, if you don't understand  
9 a question, if our friend, the court reporter,  
10 doesn't tell me, you should.

11 A. Okay.

12 Q. Okay?

13 You are employed as a managing  
14 director at Barclays Capital, Inc.; is that  
15 correct?

16 A. That is correct.

17 Q. Can you give me a more specific  
18 explanation of your duties and responsibilities?

19 A. I'm the Global Head of the Prime  
20 Brokerage Group at Barclays, which cuts across  
21 Equities, Fixed Income and FX.

22 Q. And briefly, sir, could you describe  
23 for me what your -- what are your duties and  
24 responsibilities in that job?

25 A. I'm responsible for the delivery of

1 M. Malloy

2 the overall platform and the products that we  
3 use within Prime Services, and I'm responsible  
4 for the client servicing aspects of the  
5 business. So everything essentially after the  
6 trade.

7 Q. And does anything within the scope of  
8 your duties and responsibilities as Global Head  
9 of Prime Brokerage require you to analyze or  
10 apply values to securities?

11 MR. GREEN: Object to the form.

12 You may answer.

13 A. Not directly. Not directly in this  
14 role.

15 Q. Indirectly?

16 A. Indirectly.

17 Q. Okay. And how does that come across  
18 your screen indirectly?

19 A. If, within the Client Service Group,  
20 if there is a dispute with a margin call, we  
21 could get involved in working with the different  
22 departments on a valuation.

23 Q. And when you say "working with the  
24 different departments," do I understand  
25 correctly you would essentially -- you might be

Page 8

Page 9

1 M. Malloy  
2 the customer interface, but you would go to  
3 another department within Barclays to get the  
4 valuations done?

5 MR. GREEN: Objection to the form.

6 A. That's correct. The trading desk.

7 Q. Okay. And how long have you held the  
8 post of Global Head of Prime Brokerage at  
9 Barclays?

10 A. Since spring of 2008.

11 Q. How long have you worked at Barclays?

12 A. Eleven years.

13 Q. Now, I've premarked as Exhibit 658C a  
14 copy of a declaration that has been submitted in  
15 this action by Barclays. Do you recognize the  
16 document, sir?

17 A. I do.

18 Q. I take it that's your signature at the  
19 end of the declaration?

20 A. It is.

21 Q. And you have reviewed the declaration  
22 before you signed it?

23 A. Yes.

24 Q. And to your knowledge, the contents of  
25 the declaration are true and correct?

1 M. Malloy

2 A. Yes.

3 Q. Did you participate in the drafting of  
4 it, the writing of it?

5 A. The formation of it, yes.

6 Q. The actual words in the declaration?

7 A. I reviewed the words in the sentences,  
8 yes.

9 Q. But a draft was prepared for you, you  
10 reviewed it for accuracy, and you'll stand  
11 behind the accuracy of your declaration?

12 A. Yes.

13 Q. Now, the declaration recites that you  
14 had read paragraph 92 of a certain motion, the  
15 Debtors' Motion For An Order, et cetera, et  
16 cetera, correct?

17 A. (Witness nods.) Yes.

18 Q. That was the other instruction I  
19 should have given you. You have to give your  
20 answers out loud, please.

21 Did you review anything in the motion  
22 papers other than paragraph 92?

23 MR. GREEN: Object to the form.

24 A. No.

25 Q. And paragraph 92 of your declaration

Page 10

Page 11

1 M. Malloy  
2 recites, refers to a particular document  
3 previously marked as Exhibit 144A. Do you see  
4 that?

5 MR. GREEN: Do you understand the  
6 question?

7 Q. Take a look at paragraph 2 of your  
8 declaration.

9 MR. GREEN: You might want him to  
10 restate the question so you understand.

11 A. Can I just see the Exhibit 144A?

12 Q. Sure. I'm about to hand it to you.  
13 Let's do it that way.

14 I'm giving you a copy of what's  
15 previously been marked as Deposition Exhibit  
16 144A.

17 MR. GREEN: Thank you, Bob.

18 Q. My question, Mr. Malloy, is that  
19 document 144A the same document that's referred  
20 to in paragraph 2 of your declaration?

21 A. Yes, it is.

22 Q. Okay. And Deposition Exhibit 144A  
23 contains an e-mail from you to, among others,  
24 Gerard LaRocca. Do you see that?

25 A. Yes, I do.

Page 12

1 M. Malloy  
2 described?

3 MR. GREEN: Object to the form.

4 A. Not necessarily in charge. I got  
5 my -- I understand how some of these things work  
6 and I got involved in trying to help because of  
7 the, quite frankly, unique nature of this  
8 particular transfer. So I got involved as far  
9 as helping to get some of this collateral moved.

10 Q. Who asked you to get involved?

11 A. No one specifically. No one  
12 specifically asked me to get involved. Just my  
13 background in these matters, I was a useful  
14 resource to the group.

15 Q. And you referred to some Bank of New  
16 York statements that you had when you prepared  
17 Exhibit 144A?

18 A. Yes. I did not have those statements.  
19 I got that information from our Securities  
20 Operations Group.

21 Q. Who in the Securities Operations Group  
22 sent you that information?

23 MR. GREEN: Object to the form.

24 A. I believe it was Keith. His surname  
25 alludes me. Keith in Collateral Management.

1 M. Malloy

2 Q. Can you explain for me, Mr. Malloy,  
3 the circumstances under which you came to draft  
4 the e-mail that is marked as Exhibit 144A?

5 MR. GREEN: Object to the form.

6 A. Sure. I was involved in the  
7 collateral transfer of the Fed repo the previous  
8 day on that Thursday, and on Friday morning,  
9 essentially all the collateral did not move that  
10 Thursday night, so we were trying to ascertain  
11 essentially midday what additional potential  
12 collateral actually moved over because we were  
13 short \$7 billion that particular night.

14 So this e-mail was an estimate based  
15 on the only information that we had available at  
16 the time, which was the Bank of New York  
17 statements, but the collateral itself was not  
18 reconciled until several days later and the  
19 valuations of the collateral weren't verified  
20 until several days later as well.

21 Q. Well, who asked you to put the e-mail  
22 together?

23 A. I recollect Gerard.

24 Q. And was it Gerard LaRocca who had put  
25 you in charge of that task that you just

Page 13

1 M. Malloy

2 INFORMATION TO BE PROVIDED: \_\_\_\_\_

3 Q. If at some point Keith's last name  
4 comes to you during the deposition, let me know.  
5 And we'll leave a blank in the transcript to be  
6 filled in, if that's okay.

7 A. Understood.

8 Q. Did Keith send you Bank of New York  
9 statements?

10 A. During the course of that week, yes,  
11 at different times as we tried to reconcile  
12 things.

13 Q. Okay. Can you describe those  
14 statements to me? What did they look like?

15 A. The statements normally come out in  
16 kind of a bulk form. It has the name of the  
17 security, the Cusip, the nominal amount and the  
18 price are the normal key pieces of information.

19 Q. Do you know if the Bank of New York  
20 statements that you had access to when you  
21 prepared 144A are still in existence?

22 MR. GREEN: Object to the form of the  
23 question.

24 A. I don't know offhand.

25 Q. When was the last time you saw them?



1 M. Malloy  
2 Group.  
3 Q. And was that Keith who gave you the  
4 verbal notionals?  
5 A. As I recall, yes.  
6 Q. And was he present with you when he  
7 gave you the verbal notionals, or was it by  
8 phone?  
9 A. It was by phone.  
10 Q. Do you recall if he sent you any  
11 e-mails or any other written communication  
12 concerning the notionals?  
13 A. To produce this statement?  
14 Q. Yes.  
15 A. No, as I recall, it was all by phone  
16 because it was -- it was a very tight timeframe.  
17 I think the e-mail went out in the midmorning or  
18 early afternoon.  
19 Q. Now, in paragraph 3 of your  
20 declaration, would you take a look -- why don't  
21 you take a minute and read through that  
22 paragraph to yourself.  
23 (Document review.)  
24 Q. Have you had a chance to do that?  
25 A. Yes.

1 M. Malloy  
2 A. We had received BONY documents during  
3 that previous day in order to look at the  
4 valuations, and then I called the collateral  
5 operations managers those Fridays to get the  
6 latest information.  
7 Q. So when you prepared 144A, you  
8 extracted figures from the BONY document, as you  
9 say in your declaration, but also you extracted  
10 relevant figures from your verbal communications  
11 with others?  
12 MR. GREEN: Object.  
13 Q. Correct?  
14 A. Correct.  
15 MR. GREEN: Object to the form.  
16 Q. And the verbal communication that you  
17 had with others, did they give you information  
18 that was different from that available to you in  
19 the BONY document you referring to in your  
20 declaration?  
21 MR. GREEN: Object to the form.  
22 Do you remember?  
23 THE WITNESS: Well, yes, because the  
24 collateral had changed. We got additional  
25 collateral in on that Friday.

1 M. Malloy  
2 Q. You say in paragraph 3, "Rather, I was  
3 simply reporting to Mr. LaRocca the nominal  
4 value BONY had assigned to the collateral it had  
5 received in connection with the September 18,  
6 2008 repo transaction."  
7 Do you see that sentence?  
8 A. I do.  
9 Q. I know everybody was busy that week,  
10 but was that the purpose of your task in  
11 preparing 144A, to give that information to Mr.  
12 LaRocca?  
13 MR. GREEN: Object to the form.  
14 A. Yes, it was. The purpose of this was  
15 to see how much additional collateral we got in  
16 that Friday morning because of the shortfall the  
17 Thursday night. That was the purpose of the  
18 e-mail.  
19 Q. And in the next sentence of paragraph  
20 3, you say you were "referring to a BONY  
21 document" that you had received "shortly  
22 before." Do you see that?  
23 A. Yes.  
24 Q. What was the BONY document you were  
25 referring to in your declaration?

1 M. Malloy  
2 Q. So in paragraph 3 of your declaration  
3 where you say, "Referring to a BONY document I  
4 had received shortly before, I extracted the  
5 relevant figures and performed some mathematical  
6 calculations adding up the numbers provided by  
7 BONY and subtracting the \$45 million that  
8 Barclays had advanced," in addition to what you  
9 described there, the calculations you did were  
10 also dependent on other information; is that  
11 right?  
12 MR. GREEN: Object to the form.  
13 A. Specifically, I started with the  
14 valuations from the Thursday night.  
15 Q. Yes.  
16 A. And then updated it with the Friday's  
17 figures, the BONY statements from the Thursday  
18 night which we had received, which was a day  
19 old, and then the Friday valuations.  
20 Q. And the Friday valuations you  
21 understood also to be derived from BONY  
22 valuations, correct?  
23 A. Yes.  
24 Q. They were not the result of any  
25 internal valuation done by Barclays personnel?

1 M. Malloy  
2 A. No.  
3 Q. So the calculations that you prepared  
4 in Exhibit 144A derive entirely from BONY's  
5 marks, correct?  
6 A. That is correct.  
7 Q. And you took the information you had  
8 about the BONY marks and you put together a  
9 calculation of what you describe in your e-mail  
10 as excess collateral; is that right?  
11 MR. GREEN: Object to the form.  
12 A. In the e-mail, yes.  
13 Q. And the excess collateral, the number  
14 on paragraph 144A is 7.19; that's billions,  
15 correct?  
16 A. That number is in billions.  
17 Q. And so the calculations that you  
18 performed or the calculations you put together  
19 based on the BONY marks indicated there was  
20 excess collateral of 7.19 billion in the repo,  
21 correct?  
22 MR. GREEN: Object to the form.  
23 A. Based on the BONY marks, but the other  
24 issue that we had is none of this collateral was  
25 reconciled, so this was the best estimate that

1 M. Malloy  
2 A. I don't know.  
3 Q. Okay. When was the last time you saw  
4 that spreadsheet?  
5 A. That Friday.  
6 Q. Did you transmit that spreadsheet by  
7 e-mail or by some other mechanism?  
8 A. I believe by e-mail.  
9 Q. And who was the Jackie you refer to in  
10 that sentence?  
11 A. It was the -- Jackie Stanley.  
12 Q. And what was Jackie Stanley's job?  
13 A. She's an administrative assistant.  
14 Q. And do you know if Jackie has a copy  
15 of the spreadsheet that you refer to here?  
16 MR. GREEN: Object to the form.  
17 A. I don't know.  
18 MR. GAFFEY: Again, Chris, I don't  
19 think that spreadsheet has been produced, so  
20 I would make the same request for its  
21 production.  
22 Q. Now, do you know if the -- well, you  
23 performed no independent valuation of the  
24 collateral in the repo at this point, correct?  
25 A. That's correct.

1 M. Malloy  
2 we had at that point in time.  
3 Q. I would be grateful if I could just  
4 have an answer to the question I actually asked,  
5 which is the calculations that you put in  
6 Exhibit 144A were based solely on BONY marks,  
7 correct?  
8 A. Correct.  
9 Q. And the calculations you did in 144A  
10 based solely on BONY markets indicated excess  
11 collateral of 7.19 billion, correct?  
12 MR. GREEN: Object to the form.  
13 A. Yes.  
14 Q. And you transmitted that information  
15 about excess collateral of 7.19 billion,  
16 according to the BONY marks, to Messieurs  
17 LaRocca and King, correct?  
18 A. Yes.  
19 Q. And you refer in your e-mail to a  
20 spreadsheet, "I will send Jackie a spreadsheet  
21 as well for Gerard," do you see that?  
22 A. I do.  
23 Q. Did you prepare such a spreadsheet?  
24 A. As I recall, yes.  
25 Q. Do you know if it still exists?

1 M. Malloy  
2 Q. Were you involved thereafter in any  
3 independent valuation of the collateral in the  
4 repo?  
5 A. No.  
6 Q. Do you know if at some point after you  
7 prepared your e-mail there was an independent  
8 valuation of the collateral in the repo  
9 performed?  
10 A. I don't know firsthand, but as a -- as  
11 a business issue, you get independent marks for  
12 your collateral.  
13 Q. So when you take collateral in, after  
14 you've got it, after you own it, you figure out  
15 what it's worth, right?  
16 A. Yes.  
17 Q. When you take the collateral in out of  
18 a repo, do you take it in at those marks and  
19 then figure out an independent valuation later?  
20 MR. GREEN: Object to the form.  
21 A. No, because when you -- when you book  
22 the collateral, you have your own pricing  
23 mechanism. You don't use the Bank of New York  
24 marks.  
25 Q. Do you know when Barclays booked the

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Page 31

1 M. Malloy  
2 valuation of the collateral is it comes in  
3 marked by the collateral agent, correct?  
4 MR. GREEN: Object to the form.  
5 A. No.  
6 Q. Why does BONY put marks on it at all?  
7 A. Because you need some reference to say  
8 what they show is the value of the overall  
9 collateral, you need some piece, but when we  
10 book it in our systems, you have a separate  
11 process that goes through what that valuation  
12 is.  
13 Q. Describe that process to me, please.  
14 A. It would change depending upon the  
15 different trading desks. So, once you book the  
16 collateral, there's different hierarchy  
17 processes that you use to validate a position.  
18 You can get different pricing fees versus  
19 different traders that would be marking it.  
20 Q. And again, forgive me if I'm going  
21 over some old ground, but I want some clarity.  
22 When you say "once you book the collateral," I  
23 want to go back to something I asked you a  
24 moment ago. When the collateral arrives, is it  
25 booked?

Page 32

1 M. Malloy  
2 Q. Okay. That's a service that BONY  
3 provides to Barclays as its collateral agent,  
4 correct?  
5 A. As I understand the process, we don't  
6 use the BONY pricings in our collateral  
7 valuation processes. We use independent.  
8 Q. Who within Barclays is the person with  
9 direct knowledge of that topic?  
10 MR. GREEN: Object to the form.  
11 Q. I just take note you qualified by  
12 saying "as I understand it." So I'll give you a  
13 chance to shorten your deposition. Who would  
14 you ask that question of?  
15 MR. GREEN: What is the question? I'm  
16 sorry.  
17 Q. Who would you ask?  
18 MR. GREEN: Ask what?  
19 A. The valuations?  
20 Q. Yes.  
21 A. It depends on each one of the trading  
22 desks because each product is a little bit  
23 different. So, for example, if you're working  
24 with equities, it's a lot simpler because you  
25 can look at a closing price on an exchange. If

1 M. Malloy  
2 A. No.  
3 MR. GREEN: Object to the form.  
4 Q. So does the valuation take place  
5 before or after you book the collateral?  
6 A. The valuation --  
7 MR. GREEN: Object to the form.  
8 A. -- takes place after you book the  
9 collateral.  
10 Q. And this independent valuation, tell  
11 me what happens. Do they look at the BONY marks  
12 and determine whether they're right or wrong, or  
13 is it a from-the-ground-up valuation?  
14 MR. GREEN: Object to the form.  
15 A. It's normally done as a ground-up  
16 within your individual systems because the marks  
17 that you use for your collateral is similar to  
18 all the positions that you have at the firm.  
19 Q. And when Barclays is engaged in  
20 Repurchase Agreements and BONY is the custodial  
21 agent, one of BONY's tasks, one its jobs is to  
22 apply a value to the assets in the repo,  
23 correct?  
24 MR. GREEN: Object to the form.  
25 A. On the BONY systems, yes.

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1 M. Malloy  
2 you're looking at more esoteric bonds and credit  
3 bonds, each process is different because  
4 different people use different pricing sources  
5 and then ultimately trader marks, if need be,  
6 because their price is one thing, but the  
7 liquidity is another, meaning if it's a larger  
8 bond or a smaller bond. So I'm not trying to  
9 avoid the question.  
10 Q. No, I know.  
11 A. It's different people depending on the  
12 asset class.  
13 Q. In that sort of latter category where  
14 it's a little more complicated to figure out,  
15 that takes some period of time, right?  
16 MR. GREEN: Object to form.  
17 A. Depending upon the collateral.  
18 Q. And during the time it takes to  
19 perform that collateral valuation, how is the  
20 collateral shown on Barclays' books?  
21 MR. GREEN: Object to the form.  
22 A. It will come -- it'll have a hierarchy  
23 within Barclays. It will assign a price in  
24 there associated with the systematic process,  
25 but it doesn't take into consideration, you

1 M. Malloy  
2 know, like I said, size or potential sale  
3 prices.  
4 Q. And again, my question -- I think we  
5 might be missing each other here. It takes a  
6 period of time, be it two days, three days, a  
7 week, it takes a period of time for some  
8 securities to be valued according to Barclays,  
9 under Barclays' systems and procedures, correct?  
10 A. Yes.  
11 Q. That could take, for example, three  
12 days, just -- yes?  
13 A. For a security, it's possible it could  
14 take three days.  
15 Q. With that kind of security, when it  
16 comes in the house, when it comes to Barclays  
17 and it takes three days to value it, at what  
18 value is it held on Barclays' books in that  
19 three days?  
20 MR. GREEN: Object to the form.  
21 A. There will be a price in the system in  
22 which to value that. That price will be based  
23 on Barclays' protocol of how the pricing regime  
24 would work.  
25 Q. And does that pricing regime take into

1 M. Malloy  
2 at which the collateral was initially posted to  
3 Barclays' books?  
4 MR. GREEN: Object to the form.  
5 A. I don't. I didn't book the  
6 collateral.  
7 Q. Now, are you comfortable, sir, again,  
8 with reference to Exhibit 144A -- not your  
9 declaration, the other exhibit.  
10 A. Yes.  
11 Q. Are you comfortable that your e-mail  
12 accurately depicts the values that were drawn  
13 from the BONY information that you had?  
14 MR. GREEN: Object to the form.  
15 Q. You know what, that question is just  
16 way too complicated.  
17 Were you comfortable that your e-mail  
18 was accurate when you sent it?  
19 MR. GREEN: Object to the form.  
20 A. As accurate as this e-mail could be at  
21 12 o'clock on that Friday with collateral  
22 moving, yes.  
23 Q. Now, if you go back to your  
24 declaration, if you don't mind, and turn the  
25 page to paragraph 4, you say in paragraph 4, "In

1 M. Malloy  
2 account the marks applied by the collateral  
3 agent?  
4 A. Typically, no.  
5 Q. Where is the initial price derived at?  
6 A. You get a number of different pricing  
7 feeds, so you have some feeds that are more  
8 focused on that particular asset class so some  
9 feeds are better than others. You know, some  
10 securities it's not difficult because --  
11 exchange-traded, for example. So you'd using  
12 the closing exchange price.  
13 Q. You get a hundred shares of Verizon,  
14 you can check the price, right?  
15 A. Right. The only thing you'd have to  
16 look at that is if the position was large, you  
17 might have to look at the particular price  
18 because you couldn't liquidate such a larger  
19 position, as an example.  
20 Q. Let me move from the general to the  
21 specific.  
22 With respect to the collateral that  
23 was in this repo that we're talking about, that  
24 is, the September 18 repo, do you know one way  
25 or the other what the source was of the values

1 M. Malloy  
2 preparing that e-mail, I conducted no  
3 independent valuation and made no effort to  
4 validate BONY's numbers, which in any event I  
5 believed to be a preliminary list." Do you see  
6 that sentence?  
7 A. I do.  
8 Q. Did anyone else at the time that you  
9 prepared the e-mail, or in connection with  
10 preparing the e-mail, had anyone else done an  
11 independent valuation?  
12 A. I don't see how we could because all  
13 of the collateral wasn't booked.  
14 Q. And in the next sentence of that  
15 paragraph, you say that "many of the securities  
16 to which BONY assigned nominal values were  
17 highly illiquid and would have required  
18 substantial analytical work to value  
19 accurately." Do you see that portion of the  
20 sentence?  
21 A. I do.  
22 Q. Did you have any discussions with Mr.  
23 LaRocca or Mr. King about that topic at the time  
24 that you sent this e-mail?  
25 A. I remember discussing with Mr. LaRocca



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<p>1 M. Malloy</p> <p>2 as the securities came through that there was</p> <p>3 corporate bond inventory in there, and corporate</p> <p>4 bond valuations were very subject at that point,</p> <p>5 they were very liquid.</p> <p>6 Q. Did you have any discussions with Mr.</p> <p>7 LaRocca about any of the buckets of securities</p> <p>8 that come over being large positions that would</p> <p>9 have required some sort of liquidity discount?</p> <p>10 MR. GREEN: Object to the form.</p> <p>11 A. In the Fed transfer, not specifically,</p> <p>12 no, not that I can recall.</p> <p>13 Q. Were there any particular corporate</p> <p>14 bonds that you discussed with Mr. LaRocca that</p> <p>15 would require closer analysis to arrive at a</p> <p>16 valuation?</p> <p>17 MR. GREEN: Object to the form.</p> <p>18 A. No, it was more that asset class at</p> <p>19 that point in time was under tremendous stress.</p> <p>20 Q. In any of --</p> <p>21 A. Unlike equities, which are more</p> <p>22 liquid.</p> <p>23 Q. In any of your conversations with Mr.</p> <p>24 LaRocca, did you talk about any particular, by</p> <p>25 name, any particular of the securities in the</p>	<p>1 M. Malloy</p> <p>2 repo as opposed to talking about them by asset</p> <p>3 class?</p> <p>4 MR. GREEN: Object to the form.</p> <p>5 A. In the Fed repo, not that I recall,</p> <p>6 no.</p> <p>7 Q. Now, further into that sentence in</p> <p>8 paragraph 4, that is, the second -- I'm sorry,</p> <p>9 the third sentence in paragraph 4, you refer to</p> <p>10 substantial analytical work and you say that was</p> <p>11 "work that BONY had simply not had time to do."</p> <p>12 What's the basis of that statement?</p> <p>13 How do you know BONY didn't have time to do it?</p> <p>14 A. That was really more referring to the</p> <p>15 getting us the accurate statements of everything</p> <p>16 that was in there. The only reason I know it</p> <p>17 wasn't able to do was we didn't shut the whole</p> <p>18 process till I think it was like 2 o'clock in</p> <p>19 the morning, so all of the reporting didn't come</p> <p>20 out -- until I think it was a couple hours out</p> <p>21 of the normal end-of-day business. It was two</p> <p>22 hours delayed.</p> <p>23 Q. So when you refer in your declaration</p> <p>24 to "work that BONY simply had not had time to</p> <p>25 do," we should understand you to be referring to</p>
Page 40	Page 41
<p>1 M. Malloy</p> <p>2 the work of getting you the documents, getting</p> <p>3 you the information?</p> <p>4 MR. GREEN: Object to the form.</p> <p>5 Q. As opposed to time to perform</p> <p>6 valuations that were contained in that</p> <p>7 information?</p> <p>8 A. Well, they're related. If you don't</p> <p>9 have all of the collateral in there, your</p> <p>10 valuation is off.</p> <p>11 Q. Well, in that sentence you, again, in</p> <p>12 the whole sentence, and I don't mean to break it</p> <p>13 up, but -- let me read the whole thing into the</p> <p>14 record: "To the contrary, given that many of</p> <p>15 the securities to which BONY assigned nominal</p> <p>16 values were highly illiquid and would have</p> <p>17 required substantial analytical work to value</p> <p>18 accurately -- work that BONY had simply not had</p> <p>19 time to do -- I did not believe that the BONY</p> <p>20 numbers represented an accurate assessment of</p> <p>21 what the collateral was worth."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. When you put this in your declaration,</p> <p>25 was that meant to be a statement about the</p>	<p>1 M. Malloy</p> <p>2 values that BONY assigned or, as I think you</p> <p>3 have just described, BONY hadn't had time to get</p> <p>4 you full collateral lists?</p> <p>5 MR. GREEN: Object to the form. You</p> <p>6 mischaracterized his testimony.</p> <p>7 A. This piece, when I was assigning the</p> <p>8 nominal values -- it's twofold. So number one</p> <p>9 is all the collateral so that these high-level</p> <p>10 numbers which is what I was looking at, right --</p> <p>11 Q. Yes.</p> <p>12 A. -- is what's representative. And</p> <p>13 that's in two forms: One, the overall</p> <p>14 collateral that you're going to be getting in,</p> <p>15 and yes, the valuation that they were applying.</p> <p>16 So it's twofold, number one, it's all</p> <p>17 the collateral that actually came in and then</p> <p>18 updating all those prices on the Bank of New</p> <p>19 York component, because we were running two</p> <p>20 hours late, I had no knowledge of even those</p> <p>21 valuation numbers, which we don't use in our</p> <p>22 systems, were -- were refreshed due to the late</p> <p>23 nature of the process. I couldn't tell if they</p> <p>24 had updated all their prices or other collateral</p> <p>25 came in.</p>



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1 M. Malloy  
2 Q. To go back to the sentence that's in  
3 your declaration, are you describing in that  
4 sentence the process of updating the prices, or  
5 are you saying that BONY didn't have time to get  
6 you an accurate -- a complete collateral list?  
7 MR. GREEN: Object to the form.  
8 A. In this statement, in this particular  
9 sentence, the price.  
10 Q. How do you know that BONY had not had  
11 time to do the pricing?  
12 A. As I stated earlier, based on the fact  
13 that everything was backed up, I could not rely  
14 upon the fact that everything was accurate.  
15 Q. Did you have any conversations with  
16 anyone at BONY about whether they had time to do  
17 the pricing at the time that you prepared  
18 Exhibit 144A?  
19 A. Not that I recall.  
20 Q. Did you talk to anyone who had talked  
21 to BONY about whether they had time to do the  
22 pricing?  
23 MR. GREEN: Object to the form of the  
24 question.  
25 A. Not specifically, not pricing that I

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1 M. Malloy  
2 actually put in place that following morning.  
3 That's what I was referring to in that  
4 statement.  
5 Q. You've explained to me how it would  
6 take Barclays some time to do its analytical  
7 work to arrive at pricing that it wanted. I'm  
8 asking a different question. I'm asking you,  
9 what's the basis of your statement that BONY  
10 simply had not had time to do that? How do you  
11 know that that's true?  
12 MR. GREEN: Object to the form. Asked  
13 and answered.  
14 Q. The answers are about Barclays. I'm  
15 asking about BONY. How do you know BONY didn't  
16 have time to do it?  
17 MR. GREEN: The statement is they did  
18 not have the time to do the work accurately.  
19 MR. GAFFEY: The statement says what  
20 it says. You don't have to explain it to  
21 him. What I want is the basis of this  
22 information in this statement, under penalty  
23 of perjury, that BONY did not have time.  
24 MR. GREEN: You don't need to hammer  
25 on about "under penalty of perjury." He

1 M. Malloy  
2 recall.  
3 Q. So could you tell me what is the basis  
4 for your statement in your declaration that BONY  
5 did not have time to do the pricing? What's the  
6 information source that gave you the ability to  
7 swear to the truth of that?  
8 A. The fact that we could not have  
9 verified all that information.  
10 Q. That's a different question, sir. The  
11 question is how did you know, how were you able  
12 to say in your declaration that BONY did not  
13 have time to do valuations?  
14 MR. GREEN: I think he's answered.  
15 Q. What's the source of that information?  
16 MR. GREEN: I think he's answered your  
17 question, Bob.  
18 MR. GAFFEY: I don't think he has.  
19 MR. GREEN: I think he has.  
20 Q. You can answer the question.  
21 MR. GREEN: Object to the form.  
22 A. In relating to this specific e-mail,  
23 right, what I was referring to in this statement  
24 is the fact that analytical work could not have  
25 been done based on the late nature that we

1 M. Malloy  
2 understands he signed the declaration under  
3 penalty of perjury.  
4 Q. So what's the basis of your knowledge,  
5 sir, that BONY did not have time to do  
6 valuations?  
7 MR. GREEN: He has given that to you,  
8 Bob.  
9 A. At the time I wrote this e-mail, we  
10 did not have all of the relevant information  
11 from Bank of New York. I was simply referring  
12 to the timing delay in which to get all of the  
13 information from Bank of New York. It was not  
14 to complete, as I understood it, talking to  
15 the -- talking to the collateral people coming  
16 back for when I put this in place.  
17 Q. And when you got the information from  
18 BONY, it had BONY's pricing on it, correct?  
19 MR. GREEN: Object to the form.  
20 A. That Friday?  
21 Q. Whenever it came in on the Thursday or  
22 Friday, it came in with pricing, yes?  
23 A. Yes.  
24 Q. And the pricing was pricing assigned  
25 to it by BONY, correct?

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1 M. Malloy  
2 A. Yes.  
3 Q. So it's fair to say that, at least by  
4 the time BONY got you the information, BONY had  
5 time to arrive at its own version of the pricing  
6 of the collateral, correct?  
7 MR. GREEN: Object to the form of the  
8 question.  
9 A. They produced statements. I don't  
10 know how accurate -- I was suspect of the  
11 accuracy at that time given, again, the delay  
12 that we had in the processing.  
13 Q. Did you get any information from BONY  
14 that did not contain pricing, that only had  
15 nominals?  
16 A. I don't know because I did not receive  
17 those statements on that Friday.  
18 Q. Did you ask anybody if that was so?  
19 Do you know one way or the other?  
20 MR. GREEN: Object to the form of the  
21 question.  
22 A. No.  
23 Q. When you referred in paragraph 4 to  
24 securities that were "highly illiquid," did you  
25 have any particular securities in mind?

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1 M. Malloy  
2 the collateral.  
3 Q. So if I were to ask you how long it  
4 took to prepare valuations for the repo  
5 collateral, would you know?  
6 MR. GREEN: Object to the form.  
7 A. No.  
8 Q. Were you involved in that process at  
9 all?  
10 A. No, other than just getting, you know,  
11 the data, you know, to the appropriate folks.  
12 Q. So you sent the data out. I'm at the  
13 other end. Are you at any point where you get  
14 the valuations back?  
15 A. No.  
16 Q. Have you ever spoken to anyone at  
17 Barclays about that topic outside the presence  
18 of your lawyers?  
19 A. No.  
20 Q. Do you have any knowledge as to how,  
21 if at all, the Barclays valuations differed from  
22 the BONY valuations?  
23 A. I don't know.  
24 Q. Do you know if they did?  
25 A. I knew we had a lot of reconciliation

1 M. Malloy  
2 A. No, just more of the corporate bonds  
3 that were under stress at the time.  
4 Q. Again, that's more by asset class than  
5 by any particular issue, any particular bond,  
6 yes?  
7 A. For the Fed repo, that's correct.  
8 Q. To your knowledge, sir, was -- I may  
9 have touched on this before. I just want to ask  
10 this to set the topic for the next few  
11 questions.  
12 After Barclays got the collateral, did  
13 it conduct a valuation of its own?  
14 MR. GREEN: Object to the form. Asked  
15 and answered.  
16 A. As the normal course of business,  
17 Barclays does make a valuation of the  
18 collateral.  
19 Q. Do you know if with respect to the  
20 particular collateral in the repo we've been  
21 talking about it followed that normal course of  
22 business, it did that?  
23 MR. GREEN: Object to the form. Asked  
24 and answered.  
25 A. I do not know because I did not book

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1 M. Malloy  
2 differences between what we expected to get and  
3 what we got in. That piece of the valuation,  
4 not pricing.  
5 Q. And let me just go back. Again, for  
6 clarity, because I had those questions about  
7 reconciliation before, are you talking about  
8 reconciling the values or reconciling the actual  
9 identity of the collateral?  
10 MR. GREEN: Object to the form.  
11 A. The latter. The identity of the  
12 collateral.  
13 (Continued on the next page to include  
14 the jurat.)  
15  
16  
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25

1  
2 UNITED STATES BANKRUPTCY COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x  
In Re: Chapter 11  
5 LEHMAN BROTHERS Case No. 08-13555 (JMP)  
HOLDINGS, INC., et al., (Jointly Administered)  
6 -----)

7  
8 \* \* \* HIGHLY CONFIDENTIAL \* \* \*

9 DEPOSITION OF PAUL EXALL

10 New York, New York

11 Thursday, August 27, 2009  
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18  
19

20 Reported by:

FRANCIS X. FREDERICK, CSR, RPR, RMR

21 JOB NO. 24380  
22  
23  
24  
25

Page 6

Page 7

**P. EXALL - HIGHLY CONFIDENTIAL**  
you what's going to happen here but basically  
I'm going to ask you a series of questions.  
You're under oath. You're going to answer the  
questions as best you can.

At some point during the  
deposition you might hear your attorney voice  
an objection to either preserve an objection  
or challenge a question that I might ask.  
That doesn't relieve you of the obligation to  
answer the question. You still have to answer  
the question. I might change the question in  
response to his deposition -- to his objection  
but unless he instructs you not to answer you  
still have to answer the question. Okay?

A. I understand.

**Q.** In that regard if I ask a question  
that's a little bit confusing or I misuse a  
term that you folks use or an abbreviation  
that you folks use, please correct me and ask  
me to clarify the question. I want to have a  
clear question so I can get a clear answer,  
okay?

A. Okay.

**Q.** Did you prepare at all for today's

**P. EXALL - HIGHLY CONFIDENTIAL**  
deposition?

A. Yes, I did.

**Q.** How did you do that?

A. I obviously met with counsel and  
prepared over the course of the past week.  
And I reviewed insofar as I could the  
documentation and events around the time of  
the acquisition insofar as I could recall them  
and reference them.

**Q.** Okay. Did any of those documents  
refresh your recollection about anything in  
connection with this litigation?

A. Yes, they did. Yes.

**Q.** Which documents are those?

A. I don't recall. I mean, I read  
through a lot of old e-mail correspondence and  
things like that that I have in relation to  
the matter. And I had discussions with people  
that assisted me in the preparation of the  
spreadsheet.

**Q.** And you don't have any specific  
document that refreshed your recollection  
about that?

A. Nothing specific.

Page 8

Page 9

**P. EXALL - HIGHLY CONFIDENTIAL**

**Q.** Okay. You're aware that you've  
been asked to appear by Barclays as a 30(b)(6)  
witness on specific topics, correct?

A. Yes.

**Q.** Okay. Well, let's start off with  
the 30(b)(6) notice. I'm going to hand you a  
copy of a document marked as Exhibit 279B  
which is entitled Debtor's First Rule 30(b)(6)  
Deposition Notice to Barclays on Issues  
Pertaining to Accrued '08 FY Liability Under  
the Asset Purchase Agreement.

And my question is have you ever  
seen this deposition notice?

A. I have.

**Q.** Fair to say you reviewed this in  
preparation for today's deposition?

A. I have reviewed this, yes.

**Q.** And if you look on Schedule A  
which is the third page you'll see you've been  
designated as a 30(b)(6) witness in connection  
with bonus and severance payments made to  
former Lehman employees, right?

MR. GREEN: Object to the form of  
the question. That's not all the

**P. EXALL - HIGHLY CONFIDENTIAL**  
schedule says.

MR. HINE: Okay.

**Q.** But in general you're here to  
testify about bonus and severance payments  
made to former Lehman employees, right?

A. I'm here to represent that --  
what's represented on the schedule prepared in  
respect to this deposition.

**Q.** Okay. Now, that schedule is the  
schedule -- the spreadsheet referenced in this  
Schedule A?

A. I believe it to be, yes.

**Q.** And then a couple days ago we  
received a replacement or an updated  
spreadsheet so you understand that that's the  
subject of today's deposition as well.

A. I do.

**Q.** Okay. We'll get to that later.  
I'm done with that exhibit.

Well, before I finish on that did  
you undertake any investigation in connection  
with being a 30(b)(6) witness?

A. What do you mean by that?

**Q.** Well, did you look into any of the

**P. EXALL - HIGHLY CONFIDENTIAL**  
issues that are embodied in that spreadsheet in preparation for today's deposition?

A. I prepared the spreadsheet, itself.

Q. Okay.

A. So I understand the items on it and can testify to those.

Q. Okay. Could you just give me a little background about yourself? You're a Barclays employee; is that correct?

A. Barclays Capital employee, that's correct.

Q. And how long have you been with Barclays?

A. As a permanent employee I've been with Barclays since April 2000. Prior to that I consulted with Barclays Capital from around June 2008.

MR. GREEN: You mean 1998? Excuse me.

Q. I think you just lost me.

A. 1998, sorry.

Q. All right. Just so I have it, you consulted with Barclays from June 1998 to

**P. EXALL - HIGHLY CONFIDENTIAL**  
April 2000?

A. That's correct.

Q. And from April 2000 you've been a permanent employee of Barclays; is that right?

A. That's right.

Q. And in what capacity are you employed by Barclays?

A. Currently my job title would be head of compensation analytics across investment banking and investment management.

Q. How long have you held that position?

A. I would estimate four -- three, four, five years.

Q. Okay. And what were you before that?

A. I've been a director in HR for several years. The job role, itself, has existed since -- it sort of -- it's become a formal role so to speak. I've been doing this particular function for Barclays Capital, for BGI, and for Barclays Wealth, over a period of time since I joined the HR department.

Q. Okay. And is it fair to say that

**P. EXALL - HIGHLY CONFIDENTIAL**  
you've been in the HR department since you came to Barclays?

A. No, that's not correct. Initially in 2008 I joined the investment banking finance department which then amalgamated into the finance global department. And I worked there until approximately July 2001 when I transferred down to HR.

Q. Did any of your work prior to July 21 involve compensation issues?

A. Insofar as it related to finance matters and books and records of Barclays Capital, yes.

Q. Well, let me -- let's take a step back. If you were to describe your current duties, could you just explain to me what your duties and responsibilities are in your current position?

A. The primary responsibilities that I assume are -- I work for Michael Evans as the global head of HR across investment bank, management. My primary duties involve -- and this is the best way I can describe it -- the liaison between Barclays Capital HR and -- or

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IBRAM HR because we span Barclays Global Investors and Barclays Wealth, with the group HR function and the board HR and remuneration committee of Barclays PLC. So any compensation matters that require approval by the remuneration committee under its terms of reference as a committee of the board of Barclays, those matters come through me subject to approval by management.

Q. Okay. So --

A. That's one of the primary roles. The other functions I perform are some analytical modeling around internal compensation related matters for Barclays Capital BGI and Wealth.

Q. You keep saying different entities here. BGI is what?

A. Yes. Just to explain the structure of what is known as investment banking and investment management -- if you look in the books -- in the published report of the accounts of Barclays PLC there's investment banking and investment management and what's called GICB and then there's the



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group center. Investment Banking and Investment Management comprise the three businesses run by Mr. Diamond. Barclays Capital, Barclays Global Investors, now subject to the sale to Blackrock, and Barclays Wealth.

**Q. And your primary role is with that group?**

A. That's correct.

**Q. And other groups you have a role or not?**

A. No.

**Q. Okay. So did I understand you correctly that you interface between that group, the one run by Mr. Diamond, with respect to compensation matters to the committee of the board who approves compensation; is that right?**

A. Yes. I do not liaise directly with them. We go through obviously our own management who represent us on that committee. And I liaise with the group HR function who again represent them and others on that committee.

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**Q. Okay. So Mr. Evans is -- and what is his title?**

A. Mr. Evans is -- amongst other things he's responsible for several departments. I'll probably to get this wrong but in my capacity he's global head of human resources across global investment global management.

**Q. So you report to him?**

A. I do.

**Q. Do you report to anyone else directly?**

A. Not directly.

**Q. Okay.**

MR. GREEN: Bill, I just want to without giving a long speech say that when you're getting background from Paul of his understanding of the organization, I mean this is just background from him. He's not speaking as a 30(b)(6) deponent in terms of taking a position for the company on what the organizational structure is.

MR. HINE: Fair enough.

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MR. GREEN: All right.

BY MR. HINE:

**Q. So, Mr. Exall, could you explain to me -- you're aware that this whole proceeding and these depositions have to do with the sale -- a transaction between Lehman and Barclays that closed on or around September 22nd, 2008, correct?**

A. I understand that, yes.

**Q. Okay. Could you just describe for me generally any role you played in connection with that transaction through -- what I'm asking about is any role you played in the negotiations of the transaction or the closing or anything else related to it.**

MR. GREEN: Object to the form.

You may answer.

A. I played no role whatsoever in any negotiations whatsoever.

**Q. Okay. So -- and, again, I just want to get a sense of your general background here. You were not involved in discussions concerning the compensation provisions that later made their way into the Asset Purchase**

**P. EXALL - HIGHLY CONFIDENTIAL Agreement; is that right?**

MR. GREEN: Objection to the form of the question. You may answer.

A. Could you repeat the question, please?

**Q. You were not involved, am I right, in the negotiations or discussions concerning the compensation provisions that later made their way into the Asset Purchase Agreement in this case; is that right?**

A. That is right. I was not involved.

**Q. Okay. And how did you learn about the compensation provisions that are embodied in the Asset Purchase Agreement?**

MR. GREEN: Object to the form.

A. I was passed a copy of the purchase agreement by some colleagues in the finance department.

**Q. Okay.**

A. And reading that and -- I came to understand that there were some provisions in there in relation to compensation.

**Q. Okay. And were you passed -- when**

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**were you passed that agreement?**

A. I can't recall the exact date but it would have been on or around the 22nd of September or shortly thereafter.

**Q. Okay. And did you need to consult that agreement to do your job from then on?**

A. It was a point of reference, yes.

**Q. Okay. Were you passed any other documents related to compensation in connection with this transaction?**

A. Yes.

**Q. Like what?**

A. I requested to see a copy of the schedule referred to in the APA.

**Q. Okay.**

A. The sale agreement.

**Q. Okay.**

A. And I was passed what was represented to me as being that schedule.

**Q. Okay. Anything else?**

A. I don't recall getting any other specific sale-related documentation in that regard, no.

**Q. Okay. Have you ever seen a copy**

**P. EXALL - HIGHLY CONFIDENTIAL**  
**of the first amendment to the Asset Purchase Agreement?**

A. I don't believe so, no.

**Q. Okay. Fair to say you don't have any use for that document in connection with the work you've performed with respect to compensating former Lehman employees?**

MR. GREEN: Object to the form of the question.

MR. HINE: It was a bad question.

Let me try again.

**Q. Is it fair to say you haven't had need to consult with the first amendment of the APA in connection with the work you performed with respect to compensation for former Lehman employees?**

A. I did not consult it.

**Q. Okay.**

A. Consequently, I do not know if I needed to.

**Q. Okay. Fair enough.**

**Have you ever seen a document called a clarification letter that was agreed to between Barclays and Lehman in connection**

**P. EXALL - HIGHLY CONFIDENTIAL**

**with the Asset Purchase Agreement?**

A. I don't recall specifically seeing that document. I know of its existence but I don't recall actually either seeing it or having read it in any great detail.

**Q. Okay.**

A. If I did see it.

**Q. Do you have any understanding of its purpose?**

A. No. Not particularly.

**Q. Do you have any understanding of how it relates in any way, if at all, to compensation issues?**

A. No.

**Q. Okay. Is it fair to say that you've been able to do your job with respect to compensation of former Lehman employees without consulting the clarification letter?**

A. I believe so.

**Q. Okay. And I believe you said earlier that you prepared the spreadsheet that we're going to be discussing here today?**

A. I did.

**Q. Okay. And is that something that**

**P. EXALL - HIGHLY CONFIDENTIAL**

**you prepared in the normal course of your employment?**

A. It was prepared in the normal course of business in support of various requirements from PriceWaterhouseCoopers as part of their annual audit as well as the ancillary or related regulatory filings that they may or may not have had to prepare.

**Q. So when was it prepared?**

MR. GREEN: Object to the form.

You mean the spreadsheet? When was the original spreadsheet prepared?

MR. HINE: Well, we'll just wait till I get to the spreadsheet. I just want to get some background here.

**Q. We'll put that question aside.**

**So when did you learn of the Lehman/Barclays sale transaction?**

A. I learned -- I don't recall actually specifically learning when it occurred. I was aware that the initial discussions were being held in New York amongst various parties in relation to the original form of the transaction whereby, I

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you speculate you would have talked about.  
But do you recall any discussions between any  
of your senior Barclays management about what  
was being discussed or contemplated in  
connection with compensation-related issues  
concerning the Lehman Barclays proposed  
transaction?

MR. GREEN: These are discussions  
between Paul and senior management  
you're asking about.

MR. HINE: Yes.

A. Sorry. So let me just be clear.  
You're asking do I know of any discussions  
that my senior management may have had with  
Lehman Brothers?

**Q. No, no, no. I'm asking did you  
have any conversations with senior management  
during that week, September 15th through  
September 22nd, about the compensation issues  
that were being discussed or considered in  
connection with the Lehman Barclays  
transaction?**

A. I don't recall anything specific.  
I do know that the initial sale agreement had

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been concluded by the time I had come to New  
York and was beginning to assist Mr. Evans in  
whatever he needed me to do. And it was my  
understanding that the transaction was closed  
at that point.

**Q. And at that point do you recall  
the date you were --**

A. I look back -- I think it was on  
or around the 20th or 21st of September that I  
came across. I forget the exact date but I  
believe it was on or around there.

**Q. Okay. So you thought the  
transaction had closed by then?**

A. It was my general understanding  
that the transaction for all intents and  
purposes had been completed the prior week. I  
have subsequently come to understand that  
there was a clarification agreement and  
officially the judge may have sanctioned at a  
later date. You know, the legalities for me  
are neither here nor there. My understanding  
is that the transaction had been concluded in  
all material respects at that point.

**Q. Okay. Did you have any**

**P. EXALL - HIGHLY CONFIDENTIAL**  
understanding during that period about the \$2  
billion compensation figure that appeared on  
the schedule that you had referenced earlier?

MR. GREEN: Could you show him  
that figure?

MR. HINE: Okay. Let's get to  
the -- let's get to that.

MR. GREEN: Just so it's clear  
what we're talking about.

MR. HINE: Let's get to the  
schedule.

BY MR. HINE:

**Q. Mr. Exall, I'm going to hand you a  
copy of a document that's previously been  
marked as Exhibit 1 which is a copy of the  
Asset Purchase Agreement which I think you've  
been discussing. Just so you have it in front  
of you. And I'm also going to give you a copy  
of a document that's been marked as Exhibit 19  
which I understand is the schedule that is  
referenced in the APA. If you want just take  
a couple minutes to refresh -- review these  
documents and I'll ask you some questions.  
(Document review.)**

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**MR. GREEN: Are you ready, Paul?**

**THE WITNESS: Yeah.**

**Q. Now, my previous question had to  
do with the schedule. We'll call this the  
9/16 schedule if you will. Do you see the \$2  
billion compensation number in that schedule?**

A. I do.

**Q. Okay. Did you, during the week of  
September 15th to the 22nd say, did you have  
any conversations with any of Barclays senior  
management about that \$2 billion comp figure?**

A. I was made aware of this schedule  
during that week.

**Q. Um-hum.**

A. And I'm certain I would have asked  
someone questions with respect of the schedule  
and what I understood it -- you know, what I  
needed to interpret from it. But, yes, in  
general I would have had conversations with  
people on this.

**Q. Okay. And who gave you the  
schedule?**

A. Mr. Clackson passed me the  
schedule.

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**Q. And what did he tell you about it?**

A. He represented this as being the schedule referred to in the APA.

**Q. Okay. And you were looking down. I think -- are you looking at Section 9.1(c) of the APA?**

A. That is correct.

**Q. Okay. So this Exhibit 19 is the schedule -- or you understood that the Exhibit 19 is the schedule referred to in paragraph 9.1(c) of the APA, correct?**

MR. GREEN: Object to the form.

A. This is a copy of the schedule that was represented to me as being the schedule referred to, correct.

**Q. Okay. What did Mr. Clackson tell you about that schedule?**

MR. GREEN: Object to the form.

Asked and answered. You may answer.

A. I don't recall what he told me about it. I asked him for a copy of it as part of my own reading of the relevant sections of the APA.

**Q. Okay. And you had been previously**

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**provided a copy of the APA?**

A. Yes.

**Q. And who gave you that?**

A. I believe Mr. Gary Romaine gave me a copy of the APA.

**Q. Okay. And why did he give it to you?**

MR. GREEN: Object to the form.

A. He understood there to be compensation related matters that I would probably be -- need to be aware of.

**Q. Okay. And I take it you reviewed the APA after receiving a copy of it.**

A. In general, yes. I can't testify to having read it in any great depth. I read I think the sections in relation to me and probably, to put a word on it, skimmed the rest.

**Q. Okay. I'm not trying to be tricky here but is it fair to say you focused on Section 9.1 of the APA and probably skimmed the rest of it?**

MR. GREEN: Object to the form.

You may answer.

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A. Yes. I think that would be reasonably accurate.

**Q. Okay. Well, let's just take a look at 9.1 for a minute. If you wouldn't mind turning to 9.1(a). 9.1(a), as I understand it, has to do with Barclays offering employment to certain individuals who are defined as transferred employees.**

**Do you see that definition in there?**

A. I see the term transferred employee referred to.

**Q. Okay. Is that a term you're familiar with?**

A. No.

**Q. Well, I guess the reason I'm asking is you're charged with supervising compensation issues with respect to transferred employees, right?**

MR. GREEN: Object to the form of the question. I think that mischaracterizes his prior testimony.

A. I would say that part of my responsibility is in relation to compensation

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of the former Lehman Brothers employees that Barclays Capital or Barclays acquired under the transaction. The meaning of transferred employee in the sense of this agreement or any other document I can't testify to not being a lawyer and I just have no legal understanding of that.

**Q. Okay. So the term -- the defined term transferred employees is not something you use in the normal course of your business?**

A. Not in the normal course of my business, no.

**Q. Okay.**

**Do you know how many employees -- well, let's just explore this for a minute. You work on compensation issues related to former Lehman employees who transferred to Barclays, correct?**

A. Compensation of former Lehman employees that came to work for Barclays.

**Q. Okay. Now, do you know how many of those folks there are?**

A. I recall, and I'm approximating here, that there were in excess of 10,000



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has been complied with by Barclays with respect to former Lehman employees?

MR. GREEN: Object to the form of the question. Calls for a legal conclusion.

A. I don't know whether this or any other clause has been complied with.

**Q. Okay.**

A. I don't know what Barclays' obligations are under these. What I do know is that when individuals across the firm have been affected by a reduction in force exercise they are subject to -- for consideration to severance payments in the normal course of business.

**Q. Okay. And I believe you said that you believe that's been done in accordance with the former Lehman's policies?**

A. I believe that for former Lehman Brothers employees the former Lehman Brothers policy has been applied.

**Q. Okay.**

A. That's my understanding.

**Q. Okay. Now, this provision, 9.1(b)**

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doesn't refer to the schedule that we talked about earlier, right, that September 16th schedule?

MR. GREEN: Object to the form.

A. I don't see any specific reference to it.

**Q. Okay. Now, if we turn to 9.1(c) that has to do with bonus payments, correct? In general?**

MR. GREEN: Object to the form of the question.

A. Again, I can't interpret the clause. I see the word bonus, annual bonuses reflected in the clause. But as to what it may or may not refer to I really can't testify in any legal capacity.

**Q. I understand. I'm not asking for your legal interpretation. I'm asking as a general matter as a person charged with compensation issues and working with this stuff. Do you have a general understanding of what this provision (c) entails in connection with bonuses that were to be paid to former Lehman employees?**

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MR. GREEN: Object to form.

Do you have the question in mind?

THE WITNESS: I'm just re-reading the clause.

A. Could you perhaps rephrase the question?

**Q. Yeah. Let's try again.**

**What is your understanding -- and I understand you're not a lawyer and I'm not asking for a legal conclusion as to this paragraph. But what is your understanding about the amount of bonuses that are supposed to be paid, were supposed to have been paid to former Lehman employees who now are with Barclays?**

A. I don't understand anything in respect of this clause that refers to any amount, quantum of bonus whatsoever.

**Q. Well, but it does refer to the schedule, right?**

A. It refers to a schedule, yes.

**Q. Okay. And what did you understand that to mean when it refers to that schedule?**

MR. GREEN: Object to the form of

**P. EXALL - HIGHLY CONFIDENTIAL**

the question. Calls for a legal conclusion.

A. It refers to a schedule. And the schedule, itself, does not have the word bonus anywhere on it.

**Q. Okay.**

A. So I can't reach a conclusion as to any -- in any capacity, personal, private, on behalf of the company, as to what quantum of bonus may or may not be referred to in this clause.

**Q. Okay. I understand. I'm not asking for a legal interpretation. But in the course of preparing the spreadsheet that we're going to talk about and your work in connection with compensation related to these former Lehman employees, what did you understand the \$2 billion was supposed to cover?**

MR. GREEN: Object to the form of the question.

**Q. And when I say \$2 billion I'm referring to the 2 billion in the schedule, the September 16th schedule.**



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MR. GREEN: Object to the form of the question.

A. Again -- and to reiterate, I cannot pass a legal opinion as to what the obligations of Barclays may or may not be. It is my personal view, and that may be different to the views of Barclays or anyone else in Barclays that \$2 billion is referred to as comp. And my understanding in a personal capacity is that refers to compensation in all its forms.

**Q. In all its forms. Meaning what?**

A. In respect of pre-acquisition service of the former Lehman Brothers employees.

**Q. What do you mean by compensation in all its forms?**

A. Again, I'm speaking in my personal capacity as opposed to on behalf of Barclays. Their definition of compensation may be different than mine.

I understand personally compensation to mean any manner of awards and payments and reward to employees in general

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that would encompass things like salary, annual bonus, deferred stock, deferred cash, Benefits. Pensions. Recruit -- you know, I would say that there's no standard definition of what is termed as compensation in either the accounting environment or in the human resources environment. But my personal understanding is that compensation is any form of a award delivered to or on behalf of a employee. Or to their benefit.

**Q. Okay. I really didn't ask the definition of compensation. I'm trying to find out what in preparing the spreadsheet that we're going to talk about today and in your work in connection with providing compensation to the former Lehman employees, is that \$2 billion supposed to cover more than bonuses?**

MR. GREEN: Object to the form of the question. I think you did ask about his understanding of the term compensation to begin with so I think the lead-in to your question was inappropriate. But, nevertheless, you

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can answer the question.

A. I can testify to the schedule, itself, that's the subject of this deposition which reflects the compensation delivered, the wide discharge of compensation delivered to former Lehman Brothers employees in respect of their pre-acquisition service to Lehman Brothers.

**Q. But, Mr. Exall, you have no understanding of what that \$2 billion was supposed to encompass in connection with compensation to former Lehman employees?**

A. I don't see it defined in the agreement and I can't interpret it.

**Q. Okay. When you were asked to prepare the schedule, were you told that it should total up to \$2 billion?**

A. No.

**Q. Were you told what the amount is that in aggregate were supposed to have been paid in any form of compensation to former Lehman employees?**

A. No.

**Q. Do you have any understanding of**

**P. EXALL - HIGHLY CONFIDENTIAL**  
the amount of compensation that's supposed to be paid to former Lehman employees?

A. No.

**Q. Further into this paragraph you see -- and I'm reading starting on the seventh line down onto the eighth line it talks about forms and proportions as are consistent with purchaser's customary practices.**

And it's referring to the annual bonuses. Do you see that sentence?

A. I do.

**Q. What is -- just based on your experience at Barclays, what is form and proportions -- or what is Barclay's customary practice with respect to annual bonuses?**

MR. GREEN: Object to the form of the question as to the extent it calls for a legal conclusion.

A. Our customary practice prior to 2008 in terms of annual bonus awards at Barclays Capital --

**Q. Right.**

A. -- in general their annual bonuses were delivered in the form of either cash or

1 P. EXALL - HIGHLY CONFIDENTIAL  
2 cash and stock.

3 **Q. Right.**

4 A. Whereby above a certain threshold  
5 an amount of the annual bonus was deferred or  
6 delivered through a stock vehicle which would,  
7 based at the time, through a tax table kind of  
8 approach so above a certain threshold a  
9 proportion was deferred or delivered in stock  
10 and beyond a certain -- another step more  
11 stock was delivered.

12 **Q. Okay. And was this -- when you**  
13 **said tax table you threw me there. What did**  
14 **you mean there?**

15 A. Sorry. It's a term I use. I  
16 shouldn't use it. We colloquially refer to it  
17 as a tax table. It's in effect if your bonus  
18 is X, then there is no deferral into stock.  
19 If it's above a certain threshold, a certain  
20 proportion of the entire bonus is delivered in  
21 stock. If it's above another threshold,  
22 further proportion of that bonus is delivered  
23 in stock.

24 **Q. Okay. And as a general matter**  
25 **what percentage of bonus is provided in stock?**

1 P. EXALL - HIGHLY CONFIDENTIAL  
2 let's say, as an example, if you had a hundred  
3 pounds of an amount deferred into stock,  
4 vesting over four years, if -- you can either  
5 have pro rata vesting which is you could take  
6 a quarter, a quarter, a quarter, and 25 would  
7 accrue at the end of one, 25 after -- et  
8 cetera.

9 Cliff vesting means that it only  
10 vests at the end of the period concerned. So  
11 you'd only get the full hundred in this  
12 example at the end of the fourth year.

13 **Q. And it was a custom to have a**  
14 **three-year cliff vest period for stock**  
15 **bonuses?**

16 A. It was our custom, yes.

17 **Q. All right. And has this changed**  
18 **since 2008? You said prior to 2008.**

19 A. 2008 was a unique year for  
20 compensation and we delivered at Barclays  
21 Capital -- at Barclays in a different way  
22 subject to a different type of arrangement.

23 **Q. Are you talking about the former**  
24 **Lehman employees when you say that or --**

25 A. No. They were subject to our

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2 A. In general, our customary practice  
3 prior to 2008 was that any bonus -- and there  
4 were regional fluctuations here based on the  
5 exchange rate -- so I will quote this in  
6 pounds. Any bonus below 150,000 pounds  
7 sterling there was no deferral or no delivery  
8 in stock. Any amounts above 150,000 pounds  
9 but below 250,000 pounds of annual bonus,  
10 10 percent of the entire amount was delivered  
11 in stock. Any amounts over and above 250,000  
12 pounds, the first 250,000 pounds were  
13 delivered -- 10 percent of that was delivered  
14 in stock. Any amount above 250,000 25 percent  
15 was delivered in stock.

16 **Q. And this stock vested over time?**

17 A. That's correct. Subject to the  
18 rules of the stock -- of the plan itself, the  
19 standard practice was to cliff vest at the end  
20 of a three-year period.

21 **Q. Okay. I saw that term cliff vest.**  
22 **What does many mean?**

23 A. In general that means that it  
24 vests in equal tranches, so to speak, so some  
25 of our competitors in a stock award would --

1 P. EXALL - HIGHLY CONFIDENTIAL  
2 standard practice that was employed prior to  
3 this.

4 **Q. Okay. So as a general matter, and**  
5 **I know there's individuals, but as a general**  
6 **rule this practice -- the prior practice that**  
7 **you just described was applied to the former**  
8 **Lehman employees that came to work at**  
9 **Barclays?**

10 A. I believe that to be the case yes,  
11 in most cases, yeah.

12 (Deposition Exhibit 280B, document  
13 bearing production number  
14 BCI-EX-00077287, marked for  
15 identification as of this date.)

16 (Deposition Exhibit 281B, document  
17 bearing production number  
18 BCI-EX-00115843, marked for  
19 identification as of this date.)

20 BY MR. HINE:

21 **Q. Mr. Exall, I'm handing you two**  
22 **exhibits. One is marked as Exhibit 280B which**  
23 **is Bates stamped BCI-EX-00077287 which I**  
24 **understand to be the original version of the**  
25 **schedule that was provided to us. And the**

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2 second document is marked as Exhibit 281B  
3 which is Bates stamped BCI-EX-00115843 which,  
4 Chris, I think you'll agree is the updated  
5 schedule that was recently provided to us.

6 My first question, Mr. Exall, have  
7 you ever seen these documents before?

8 A. Yes.

9 Q. You prepared these documents?

10 A. I did.

11 Q. Okay. I want to -- and am I  
12 correct that 281B is an updated replacement  
13 version of 280B?

14 A. Yes.

15 Q. Okay. Before we put away 280B  
16 could you explain to me the differences and  
17 why you had to update it?

18 A. Sure. 280B as you referred to  
19 here was the original schedule provided around  
20 the middle of July I understand. It reflected  
21 what we believed to be an accurate picture of  
22 the discharge of compensation to previous --  
23 former Lehman Brothers employees in respect of  
24 their prior pre-acquisition service.

25 It was thought to be accurate at

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2 that time, although we were still  
3 investigating certain items reflected on the  
4 schedule. Subsequent to those investigations  
5 and the correction of a couple of  
6 typographical errors as well as some of the  
7 text was cut off from the narrative on the  
8 right-hand side of the original schedule, the  
9 updated schedule reflects a more accurate --  
10 an accurate picture of the discharge of those  
11 compensation items as of the date it was  
12 produced.

13 Q. Okay. Now, other than typos is it  
14 fair to say the main differences have to do  
15 with severance entries?

16 A. Yes.

17 Q. Okay. Just take a step back a  
18 minute. Why was this schedule -- and I'll  
19 refer to them generically now, why was this  
20 schedule prepared?

21 A. The schedule was prepared in the  
22 normal course of business to support the -- or  
23 for production to -- primarily for production  
24 to PriceWaterhouseCoopers as part of their  
25 annual audit as well as any ancillary filings

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2 they may or may not have had to provide as  
3 part of their normal course of business as  
4 auditors of Barclays.

5 Q. Okay. So this is someone from PwC  
6 requested a schedule of compensation related  
7 to the Lehman acquisition?

8 A. I was instructed that this would  
9 be needed in support of the annual audit and  
10 other related filings by my finance  
11 colleagues.

12 Q. Who told you that?

13 A. Mr. Romaine.

14 Q. Romaine?

15 A. Gary Romaine.

16 Q. Okay. And he is -- what was his  
17 position?

18 A. I believe -- I don't know -- I  
19 can't recall his exact title but he's a  
20 technical accountant in the finance  
21 department.

22 Q. Okay. He's not in the HR  
23 department, correct?

24 A. No, no.

25 Q. So is it correct to say that the

1 P. EXALL - HIGHLY CONFIDENTIAL  
2 finance department requested this type of  
3 schedule from your department?

4 A. Mr. Romaine requested it of me,  
5 yes.

6 Q. Okay. Any other purpose behind  
7 this other than to assist PwC?

8 A. No. The primary purpose of this  
9 was to assist PwC.

10 Q. Any other purposes?

11 A. I think we in general in support  
12 of our own internal accounting records would  
13 have prepared the schedule. But the primary  
14 purpose would be to support the annual audit  
15 and regulatory filings that were required.

16 MR. GREEN: Bill, I'm sorry.

17 Could we go off the record for one  
18 second?

19 MR. HINE: Sure.

20 (Discussion held off the record.)

21 BY MR. HINE:

22 Q. Mr. Exall, I think you had  
23 something you wanted to clarify?

24 A. If you could repeat that question  
25 in respect of why the schedule was prepared

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A. There was no regular requirement to update it. There were certain points of time that an update was required and as part of the -- whether it be the annual report from PriceWaterhouse or anything else in respect of what they were looking at or passing an opinion on. So there are points in time at which a schedule would have been updated and presented formally to them. I know they've had a copy I believe of this schedule. I'm not sure whether they have a copy of 281B.

**Q. So when you said this schedule you meant 280B?**

A. I meant 280B, yes.

**Q. Okay. Now, did you start preparing a schedule in this form or like this starting in September of 2008?**

A. I don't recall the exact time when we first produced the -- a first iteration of the schedule or its predecessor without guessing or consulting prior records, but what I can say is that this schedule was -- or its predecessor would have been prepared in Q4 2008.

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**Q. All right. Was either 280B or 281B prepared in any way in connection with the discovery we're undertaking here in this litigation?**

MR. GREEN: Object to the form of the question to the extent it calls for a legal conclusion.

A. That is not my understanding.

**Q. Okay. Were you ever asked to prepare a schedule in response to discovery requests in this case?**

A. No.

**Q. Okay. So this is something you had -- were you ever asked to alter these schedules or modify them in any way with respect to providing discovery in this case?**

MR. GREEN: Object to the question to the extent it invades communications between counsel and client.

**Q. I'm not asking you any discussions you may have had with attorneys in connection with this schedule. But were you ever asked to modify this schedule that you've been -- I take it you've been maintaining this schedule**

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**Q. Okay.**

A. During that period, yes.

**Q. Okay. And it's gone on through a couple iterations between Q4 '08 and mid July of '09; is that right?**

A. Of course.

**Q. Okay. And the iteration following the mid July version which is Exhibit 280B, what I have in front of me as 280B -- 281B?**

A. 281B, yes.

**Q. Okay. Were there no iterations between these two?**

A. That was the iteration.

**Q. Okay.**

A. We updated this Schedule 280B. It's now become 281B.

RQ MR. HINE: Okay. Chris, we're going to request copies of all these iterations going back to the fourth quarter of '08 just as part of our document requests.

MR. GREEN: We'll take that request under advisement.

MR. HINE: Okay.

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**for several months now, correct?**

A. That would be correct.

**Q. Since fourth quarter of '08, right?**

A. Yes.

**Q. Were you ever asked to modify the schedule in response to anything that was taking place in this litigation here in the US?**

A. Not to my recollection.

**Q. Okay. Were you ever told in any way that the amount of comp at the bottom, you'll see at the bottom of 280B it totals to 1.999 billion. Could you see that?**

A. Yes.

**Q. Were you ever told that that number should be 2 billion when all was said and done you should get down to 2 billion at the end?**

A. No.

**Q. I'm not talking in connection with this litigation. I'm just asking in general. Did anyone ever tell you that the total amount of compensation should total about \$2 billion?**



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A. I was asked to prepare the schedule in respect of detailing the discharge of our obligations to former Lehman Brothers employees in respect of their prior service and compensation for their prior service for Lehman Brothers. And this is what the schedule represents. It's items relating to pre-acquisition services.

Q. Okay. But were you ever told that it should be a total of \$2 billion?

A. No.

Q. Do you have any understanding of how this schedule and the compensation listed in this schedule relates to the 9/16 balance sheet or the schedule we looked at previously?

MR. GREEN: The Exhibit 19?

Q. Exhibit 19.

A. The only reference point between schedules 280B and 281B and the schedule you have as Exhibit 19 is the OBS compensation accrual line which is reflected on both 280B and 281B. The source referenced here is the APA which references the \$2 billion described as comp on Exhibit 19.

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equity?

A. I was requested by Mr. Romaine to -- for accounting purposes to estimate the stock component of any such compensation that may total 2 billion with the assumption that we applied -- oh, sorry. Let me say it again.

I was asked to estimate the stock potential of any compensation that may be represented by this 2 billion.

Q. Okay.

A. And the 300 million is an estimate based on historic norms and experience under the Barclays Capital stock deferral scheme.

Q. Is that the scheme we talked about earlier, the normal practice of Barclays?

A. That is correct, yes.

Q. Okay. And when did he ask you to do this?

A. I believe it's a technical accounting matter. And it's really a question for Mr. Romaine.

MR. GREEN: I'm sorry. Did you say when or why?

MR. HINE: Why.

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Q. Okay. So let's look at Exhibit 281B. I don't want to confuse the record here.

A. Okay.

Q. 281B is the most recent version of this schedule, right?

A. That's correct.

Q. Just so I understand what you just said, when you see on the -- OBS Compensation Accrual, OBS stands for opening balance sheet; is that right?

A. Yes. That's my understanding.

Q. Okay. And the source for the \$2 billion number is the APA, correct?

A. Yes.

Q. And by that you mean the source for the \$2 billion is Exhibit 19 that we just pointed to?

A. That's correct.

Q. Okay. So now how do you -- I just want to walk through preparing this schedule. How do you get from the \$2 billion number -- how do you break it into 17 -- into 1.7 billion in cash versus 300 million in

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MR. GREEN: Oh, I'm sorry.

A. It's a technical accounting matter in respect of how the -- my understanding is how the acquisition is accounted for in the books and records of Barclays PLC. I don't know the technical aspects behind it.

Q. Okay. Just a general question. Has this allocation between cash and equity changed at all since the fourth quarter of '08 when you first started preparing the schedule to the present?

A. Not to my recollection. Again, that would have to be something for Mr. Romaine.

Q. Okay. And again I'm happy if you tell me it's someone else's department. I'm not trying to get you to testify about things you have no knowledge about.

A. No, I understand.

Q. In the next -- could you just tell in the general structure here. You have payments -- I see payments in future and other items. Payments are cash outflows or expenses that have already taken place?



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MR. GREEN: Object to the form.

**Q. That's a bad question but --**

A. My understanding is that these were amounts that had been either paid in cash or awarded in equity or paid as severance at the time that this spreadsheet had been prepared.

Payable in the future I understand to be things that in most cases have not yet been paid and were due and payable at a future time through some sort of timing issue, et cetera; whereas, other items were things that were economic costs to Barclay PLC that were related to awards that had already been made.

I guess you could actually categorize the other items -- actually, the way they're represented here the ISP awards you could actually have recategorized that as payments. And payroll taxes, you could categorize that as payable in the future.

**Q. I see. When I -- again, just to compare 280B and 281B I see in the first entry under Payment it says Pre -- on 281B it says Pre 22/9 Payroll Items and in 280B it says**

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**22/2. Is that just a typo?**

A. Yes, it is.

**Q. Okay. So back to 281B. What does this entry encompass?**

A. There are two general components to the \$12 million I believe you're referring to.

**Q. Um-hum.**

A. In general, the first is a series of payments made by Barclays on behalf of former Lehman Brothers employees that were expatriates. So these are payments made to tax authorities in other jurisdictions -- or it may have been the US jurisdiction but in the UK and other international jurisdictions in respect of their pre-acquisition service.

These were liabilities that effectively would have been for Lehman Brothers but Barclays took on those liabilities and funded them and made good on those payments.

**Q. These are payments to the individuals or to regulatory authorities?**

A. To regulatory authorities on

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behalf of individuals.

**Q. Okay. Just so I understand it, these are Lehman employees who were ex-pats at the time of the acquisition who had some regulatory obligation to foreign authorities or other authorities and Barclays paid that; is that right?**

MR. GREEN: Objection to form.

You can answer.

A. That is my understanding.

**Q. Okay. And how much of this 12 million is that?**

A. I estimate it to be approximately \$7 million.

**Q. And that money didn't go to the individuals; it went to some regulatory authority, correct?**

A. That's my understanding.

**Q. Okay. And then what's the balance, the 7 from the 12?**

A. The balance of 5 -- as I said, there were two items. The balance of the 5 relates to payrolls that -- for former Lehman Brothers employees that were due and payable

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on and around the date of the bankruptcy.

Those payables are not going to be made. They were liabilities for the former Lehman Brothers. They were payables that were not going to be paid. My understanding was there was no cash to make them. As part of the ordinary course of business to take on those employees Barclays agreed to fund those payrolls in respect of those pre-acquisition services.

**Q. Okay. Just so I understand the pool of people we're talking about, you're talking about payroll -- payroll amounts that were due to the Lehman employees who came to Barclays?**

A. Yes.

**Q. You're not talking about -- this does not include payroll that was owed to Lehman employees who stayed with Lehman, correct?**

A. That's not my understanding.

**Q. We have a double negative there.**

A. Yeah. There's a double negative.

It's my understanding those

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amounts relate to payroll in respect to former Lehman Brothers employees in respect of their pre-acquisition services but these employees were employees that transferred or became employees of Barclays Capital.

Q. Okay. So it's only folks who transferred to Barclays, correct?

A. That is my understanding in most cases.

Q. Okay. When you say pre-acquisition services, what do you mean? Can I just use my colloquial term and you tell me whether I'm right or wrong. Is this base salary that was owed to these folks as of September 22nd?

MR. GREEN: Object to the form of the question. Do you mean --

Q. Well, let me back up.

MR. GREEN: This specific component of the first entry is what you're talking about?

MR. HINE: I'm talking about the \$5 million out of the 12 million that we've been talking about.

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MR. GREEN: Right.

Q. Is that what I've seen referred to as base salary?

A. Not only. I would suggest without reviewing the records in detail or investigating in general, if you're talking payroll, you're talking any base salary paid to the individual amongst other things that are payroll related.

Q. Like what?

A. Benefits, pensions. Anything that may or may not -- or that may be part of an individual's monthly salary or related items.

Q. I understand. But it's not bonus. It's not annual bonuses, right?

A. That's not my understanding, yes.

Q. We've got a double negative.

A. My understanding is that that was a payroll item and I do not believe that there were any -- as you term them -- annual bonus payments incorporated in that.

Q. When you say a payroll item you're talking about the weekly or biweekly or monthly checks that these folks were getting

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throughout the year.

A. That's my understanding.

Q. Okay. And so is this 5 million payments to those folks up to September 22nd or does it go beyond September 22nd?

A. I don't recall the exact dates. I don't know the exact dates to which the payroll related. I do know that they were the payrolls that were due and payable at the time that the acquisition was happening. The risk was -- and this was the commercial risk -- that these employees that were going to come to work for Barclays were not going to get paid for that month by Lehman Brothers. They would have had no monthly salary not being employed by Barclays at that time. So this was a make-good, I guess goodwill gesture by Barclays to fund the payroll to ensure the smooth transition into the new structure.

Q. Okay. So presumably most of these employees have been paid August 31st and this is for the period of September for which they worked?

MR. GREEN: Objection to the form

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of the question.

A. I don't know that for certain but I believe that to be the case.

Q. Okay. But when I see the title it says Pre-September 22nd payroll items, my question is does that 5 million continue these payroll items all the way to the end of the year or is it just for the period in September? Do you understand my question?

A. They do not relate to any payments for the rest of the year.

Q. Okay. So the 5 million is just to bring these employees up to September 22nd; is that right?

A. I can't testify to whether the 22nd of September is the exact date but what I can tell you is that is for their salary and related items as per a payroll that was due and payable at the time in and around the acquisition. So whether that was the 23rd or the 25th of September I can't testify. I don't know the exact dates.

Q. Okay. But assuming the date of around September 22nd, this item, the \$5

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million, does not include payments for October, November and December for those employees; is that right?

A. That is right.

Q. Okay. The next item we see is replacement RSUs. Could you tell us what that is?

A. RSU is an acronym to stand for restricted stock units.

Q. Okay. And what are they?

A. They are effectively in general stock awards made to individuals that are restricted in the sense that they either do not vest immediately or can't be sold immediately.

Q. Okay. Now, these are a form of compensation that Lehman had previously used?

A. Yes.

Q. Okay. Did Barclays previously use these?

A. Yes, we have.

Q. Okay. Now, I see that you cite here \$11 million and I just want to read your source. It says new RSUs granted as

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replacements for ex-Lehman employees granted to them in 2008 prior to the acquisition.

So just explain to me what's going on here. This is Barclays replacing some RSUs that Lehman had previously granted to its employees?

MR. GREEN: Object to form. You may answer.

A. There was a population of people that were given stock awards by Lehman Brothers earlier in 2008. At the time of the acquisition the value of those awards had declined to zero.

Q. Right.

A. For these specific employees it was decided that as a goodwill gesture, Barclays would give restricted stock awards in respect of that zero -- that original award now valued at zero in effect to split the loss 50/50.

So as a hypothetical example if the individual had been -- received an award of stock to the value of \$100 from Lehman Brothers that had gone to zero at the time of

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the bankruptcy, Barclays' goodwill gesture in respect of that employee would have been to give them a stock award to the value of 50 in Barclays stock.

Q. So it's in Barclays stock now.

A. It's in Barclays stock but relates to the value of stock awarded prior to the acquisition by Lehman Brothers.

Q. And that's based on the value of Barclays stock as of around September '08, correct?

A. That's normal practice, yes.

Q. And does this vest over a period of time?

A. It would have, yes. I don't know the specific vesting for this particular award but that would be the normal course of events, yes.

Q. Would it be the three-year cliff vest that you mentioned earlier?

A. It may or may not have been.

Often -- in many cases we will mirror the original vesting of an award at a previous employer with a replacement award. I can't

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testify to what the vesting period because I don't know it for this particular award.

Q. Okay. Well, if it vested over time, would it be entered on the balance sheet for this year?

A. Sorry. Excuse me?

Q. If it had vested over time would it be entered on the acquisition balance sheet for this year?

MR. GREEN: Object to the form of the question. You may answer if you know.

A. I believe that's a technical accounting question. I believe the answer to be yes but I can't pass an exact accounting opinion. You should refer that to Mr. Romaine.

Q. Okay. And when you say this is a goodwill gesture are you saying that Barclays wasn't obligated to do this under the APA?

MR. GREEN: Objection to the form of the question. It calls for a legal conclusion.

A. I don't know what the APA

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specifically obligated Barclays or anyone else to do. I do know that this is a goodwill gesture for those employees. That's my understanding of that award.

**Q. Okay. And are these very senior employees?**

A. I believe they are -- there are -- I -- hum. I would categorize them as employees -- I would suggest -- my recollection is actually that they're a range of employees. There were some senior employees and some junior employees in that. I don't think that they were specifically targeted as the senior group. They were a group of people that had received awards at Lehman Brothers.

**Q. Whoever happened to be in the pool of people who received an award.**

A. In the specific grouping, yes.

**Q. The next entry -- well, another question on that. Why is that not in the equity column, that 11 million?**

A. I don't know.

**Q. Do you think it should be or is it**

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**just a -- it's not paid in cash, right?**

A. My understanding it was stock awards.

**Q. Okay. You don't know why it's in --**

A. No.

**Q. Okay. You have to answer either yes or no. If you shake your head --**

A. Oh, sorry. I don't know why.

**Q. The next entry is Bonus Concluding Social Tax. Could you tell me what you mean by social tax? What is that?**

A. My interpretation of social tax would be -- my understanding would be these are any ancillary taxes that would be due and payable to various regulatory authorities in respect of any annual bonus payment at any point in time in whatever jurisdiction they have to be made in.

**Q. So is this like withholding tax? Income tax?**

A. Not personal income tax, no.

**Q. Oh. Just any --**

A. Let me characterize it again.

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Where withholdings are required, yes, they would be included in that number. It would also include whatever benefits may or may not be derived from any annual incentive payment that is made. So I believe one of those to be FICA in the US.

**Q. Okay. So this would -- this figure of 1.529 billion includes all of that type of regulatory requirements, correct?**

A. That's my understanding, yes.

**Q. Okay. And when you say bonus here, these are annual bonuses?**

MR. GREEN: Object to the form.

**Q. Well, let me show you another document. Maybe that helps me ask the question better.**

(Pause on the record.)

**Q. While we're trying to find the document, do you see in the source it says TCR 27 Feb 2009?**

MR. GREEN: 23rd Feb?

**Q. 23 Feb.**

A. TCR is an acronym for our internal on-line compensation review system. It stands

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for total compensation review. The date 23 February 2009 relates to the date the data were extracted from that system from which this -- that element of the schedule was prepared.

**Q. Okay. So this is just a database where you track compensation payments to employees?**

A. In effect, yes.

**Q. Oh, okay. And would that data have changed since February of '09 up until the date you prepared this?**

MR. GREEN: Object to the form.

A. I don't believe so. The compensation round had closed at that point.

**Q. Okay.**

A. Whilst there may be movements of items subsequent to that, I think that data extract is accurate.

**Q. When you say the compensation round had been concluded, is there like an annual schedule for the award of bonuses at Barclays?**

MR. GREEN: Object to the form.

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A. Yes. There's a normal cycle that is followed.

Q. Okay. So are you saying that they've been awarded by February 23rd and they probably didn't change between then and now?

A. At the 23rd of Feb the cash amounts would have been distributed through the payroll. The equity awards, the value thereof would have been fixed.

Q. Okay.

A. The equity awards I don't believe had been formally made in terms of the amount of stock units at that point. But the value of those awards had been fixed.

Q. But you're relatively confident that there's been no substantial changes from February 23rd to the present.

A. Yes, I am.

Q. Okay. Let me hand you a copy of an exhibit that's been previously marked as 216 which is a copy of a contract between Barclays and Mr. Lowitt. I'm just going to use this as an example so I don't expect that you're familiar with the terms but if you want

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to just take a minute to take a look at it.

(Document review.)

MR. GREEN: Bill, while he's looking at I should say that as I'm sure you know this entire deposition is designated highly confidential.

MR. HINE: Highly confidential.

MR. GREEN: And don't expect any redesignation because it's all about comp.

MR. HINE: I understand. I understand.

MR. GREEN: So it will remain that way.

MR. HINE: Well, I think our agreement is we'll treat it as all highly confidential and you guys let me know if have you any re-designations.

MR. GREEN: Right.

MR. HINE: So that's fine.

MR. GREEN: Right.

BY MR. HINE:

Q. Mr. Exall, have you had a chance to look at this document?

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A. Yes.

Q. And my question is Mr. Lowitt is apparently awarded something entitled 2008 guaranteed cash bonus.

Do you see that?

A. I do.

Q. Do you understand that that bonus is part of the bonus including social tax entry that we just talked about on this spreadsheet?

A. Yes.

Q. Okay. Is there anything else on Mr. Lowitt's contract that would be part of that \$1.5 billion figure?

A. If I take Mr. Lowitt as the example, the 4.56 million referred to in the contract as being 2008 guaranteed cash bonus would be part of the 1,271 number reflected as cash in that line.

Q. Okay.

A. The EPP -- 2008 EPP recommendation to the value of \$1.44 million as reflected in the contract, would be included in the \$258 million number.

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Q. I see. Okay.

A. Any ancillary social taxes and whatever that were due and payable to whatever authorities or any withholding tax in regard with are included in those numbers as well. Those obviously are not specified in the contract as well.

Q. I understand that. But any regulatory requirements related to those two entries on its contract would be included in the numbers that you put in the spreadsheet, correct?

A. That's correct.

Q. Okay. And how about where you see he has a special cash award, is that in that entry on the spreadsheet?

A. No, it is not.

Q. Okay. Where would I find that entry on the spreadsheet?

A. It is not on the spreadsheet.

Q. Okay. So what is the special cash award that I see several senior executives from -- former Lehman executives getting?

MR. GREEN: Object to the form of



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the question.

A. My understanding of these special cash awards is that they are retention awards subject to future service of the employee. They do not relate to pre-acquisition services performed for Lehman Brothers in relation to these individuals. Consequently, they're not on the schedule.

Q. Okay. So just so -- I was confused about that.

So where I see special cash award and various contracts that is to encourage the individual to stay at Barclays for a period of time, correct?

MR. GREEN: Object to the form.

You may answer.

A. That is my understanding of their retention award.

Q. When you say retention award that's an inducement for them to stay a period of time; is that right?

A. Yes. That's my understanding.

Q. Okay. And then -- and because that was not meant to compensate them for work

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they had done at Lehman it's not part of your spreadsheet; is that right?

A. Totally not related to the pre-acquisition service supplied by Lehman Brothers and consequently are not on the schedule.

Q. Okay. So this schedule is only relating to pre-acquisition services that former Lehman employees performed for Lehman; is that right?

A. Yes. That's correct.

Q. All right. Thank you for clarifying that.

While we're on Mr. Lowitt's contract, again we'll use it an example but do you see the provision that says termination other than for cause?

A. I see the provision.

Q. And that lays out certain benefits that he's entitled to if he gets terminated without cause. Is that what I would call a -- is that a severance payment?

MR. GREEN: Take your time to read the provision before you answer just to

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make sure your answer is addressed to the question.

(Document review.)

A. Can you repeat the question?

Q. Well, why don't we do this. We're going to get to some entries called severance on your spreadsheet so we'll come back to that question.

A. Yes.

Q. It has to do with severance so let's just postpone that question.

Let's go back to your spreadsheet.

The next entry I see is IBD Grad Programs. Could you tell me what that is?

A. These -- the IBD grad program is the graduate program implemented by the former -- well, we had one at Barclays Capital but the majority of the -- well, all the people reflected on here are the former Lehman Brothers graduates that were working in the investment banking division of Lehman Brothers that came on as part of the acquisition. The payments related to them are reflected here in respect of their pre-acquisition service.

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These were made in June of 2009.

That is a quirk -- I term it a quirk. It's market practice for Lehman Brothers graduate program to pay their annual bonuses to the graduates at midyear. It's different to the policy that we had at Barclays Capital. We stuck to this -- their policy in respect of the US graduates.

Q. These are investment banking division employees who went to grad school and is this a payment to the grad school for the school?

A. No, no, no. These are payments to the individuals. The graduate program as -- these are people as you pointed out are graduates that we recruited off campus to come and work for us. They're on the former graduate program within investment banking. And their compensation is -- I would term it as being quite rigorously standardized in the sense that there's a lot of competition in the market for these individuals and there's quite a standardized form of compensation paid to them. And they're on the specific program

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that is different to let's say non-graduate employees.

**Q. So this isn't a bonus. This is a compensation -- this is an extra form of compensation to them because they went to graduate school?**

A. No. It's an extra form of compensation because they're on the graduate program and as part of that program they're entitled to certain awards at certain points in time. June 2009 being the point in time at which they were entitled to them.

**Q. Okay. I guess I'm just not understanding that. You've recruited them out of -- Lehman has recruited them out of a grad school and this is a payment they get as an extra incentive to come work for Lehman?**

MR. GREEN: Objection to form.

You may answer.

A. This is for all intents and purposes in general their annual bonus, okay? Their timing is different than the general population for whatever reason. That's standard practice at -- it was standard

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practice at Lehman -- the cycle of their bonus awards or payments were midyear. Whereas everyone else it's year end.

**Q. Okay. But they are still in grad school still?**

A. No, no. They have left grad school. They're all graduates. But they're part of our formal graduate program having been recruited from grad school.

**Q. Okay. And how are they eventually transitioned from this program into becoming a regular -- like, how do they transition to the normal bonus cycle?**

A. I can't speak for the exact Lehman policy but in general my understanding of the graduate program that we have is that they rotate for a certain period of time within the business in which they work. They learn their business. They, you know, work, they learn, et cetera. And as and when they -- the graduate program is generally a finite amount of time. In Barclays Capital traditionally it was 18 months. The graduates did a bunch of rotations in various business areas and they

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were either employed or not employed at the end of that cycle by Barclays Capital.

**Q. Okay. So --**

A. But I -- if the Lehman Brothers scheme is the same in general as the Barclays Capital scheme, that's how I would think I would transition into what I would term as the general population.

**Q. Okay. I think I understand it. So this is -- these are folks who had been in this graduate program as of September 22nd and now are able to continue in that same program at Barclays?**

A. Yes. That's my understanding of it.

**Q. Okay. So the \$11 million here is in lieu of an annual bonus for them?**

A. It's exactly the same for all intents and purposes as any other compensation delivered to any other ex-Lehman employee. It's just that the timing is different.

**Q. Well, do they also receive a base salary?**

A. Yes, they do.

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**Q. Okay. So they have a base salary and then an additional amount paid in or around June of every year; is that correct?**

A. That's correct.

**Q. And is this only the additional amount or does this also include the base salary?**

A. This is the additional amount.

**Q. And where does their base salary fall?**

A. In the normal books and records of Barclays Capital.

**Q. So that would be up in the first item, the \$5 million we talked about earlier?**

MR. GREEN: Object to the form.

A. I would say that insofar as the IBD graduates may or may not have -- may have been in the payrolls that Barclay made good the answer would be yes.

In general, I don't believe -- I believe that most of those investment banking graduates were not part of that payroll cycle and consequently any salary paid to them pre-acquisition would have been borne -- the

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costs would have been borne by Lehman Brothers and post acquisition would have been borne by Barclays Capital in the normal course of business. And those payments would not be reflected in the schedule.

**Q. Okay. So this \$11 million for IBD graduates is only -- does not include the base salary component of their compensation.**

A. That's correct.

**Q. Okay. It only includes the portion of their compensation that they receive every June. Or thereabouts.**

A. It reflects what was paid to them in June 2009.

**Q. Okay. And --**

A. In respect of their pre-acquisition service for Lehman Brothers.

**Q. So it's paid to them in June of 2009 but it relates to their work up until September of 2008?**

A. Yes.

**Q. And how about their work from September onward?**

A. This again comes back to the

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difference in treatment between a graduate and a non-graduate. As I mentioned before, graduate compensation is quite highly specific and regulated within specified bands and it's run in a different way to compensation for non-graduates. Consequently, these amounts would have been June payable almost irrespective of the performance of the graduate.

So by the fact that we employed them as part of the acquisition those would have been paid in any event. It's simply a timing issue.

**Q. Well, does it mean that some of that 11 million relates to work that they did after September?**

A. I don't believe so to be the case.

**Q. You don't think so?**

A. No.

**Q. Why not?**

A. Because I believe as I mentioned before that those amounts would have been June payable to these graduates in any event. Irrespective of their service. These are --

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as I said, their compensation is treated somewhat differently to compensation among non-graduates.

**Q. Okay. And are they informed that this is their annual bonus?**

MR. GREEN: Object to the form of the question.

A. I haven't seen what was given to them as part of their graduate program.

**Q. Okay. If we go back to the bonus in the previous entry, the \$1.529 billion, does any of that encompass work that were performed by former Lehman employees since they've come to Barclays? In other words, after September 22nd?**

MR. GREEN: Object to the form.

Asked and answered.

A. This schedule represents compensation paid to former Lehman Brothers employees in respect to their pre-acquisition services for Lehman Brothers.

**Q. So am I correct to say that \$1.529 billion does not relate in any way to work these individuals performed for Barclays after**

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**September 22nd?**

A. That is my understanding, yes.

**Q. And so in certain employment contracts if I see anything relating to a 2009 bonus recommendation you're saying that would not be in this \$1.259 billion number?**

A. No, it wouldn't. It would not be in that number.

**Q. Okay.**

A. Well, could you show me an example if you want to be specific?

**Q. I'm not sure I have one but I --**

A. I mean, if I refer back to Mr. Lowitt's contract it talks about a 2008 guaranteed cash bonus and a 2008 EPP recommendation.

**Q. Right.**

A. Those amounts are included on the spreadsheet. Had there been two additional clauses referring to 2009 cash and stock, those would not have been on the schedule.

**Q. Okay. That was my question.**

Now, when you see on his contract he has a -- if you see on there it says

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<p>1 <b>P. EXALL - HIGHLY CONFIDENTIAL</b></p> <p>2 <b>compensation he has a base salary of 200,000.</b></p> <p>3 <b>Do you see that?</b></p> <p>4 A. Yep. I do.</p> <p>5 <b>Q. Is that on your spreadsheet at all</b></p> <p>6 <b>within any entries?</b></p> <p>7 A. No.</p> <p>8 <b>Q. And why is that?</b></p> <p>9 A. Because that salary would have</p> <p>10 been paid to him post-acquisition. The</p> <p>11 schedule does not reflect any post-acquisition</p> <p>12 obligations.</p> <p>13 <b>Q. I understand. So that is</b></p> <p>14 <b>compensation he's receiving for work he's</b></p> <p>15 <b>performing for Barclay post-acquisition.</b></p> <p>16 A. That would be correct. The only</p> <p>17 way that that -- some of that 200,000 would</p> <p>18 have been part of this schedule is if it was</p> <p>19 part of the pre-2009 payroll we discussed</p> <p>20 previously.</p> <p>21 <b>Q. I understand. Okay.</b></p> <p>22 <b>The next entry you'll see is</b></p> <p>23 <b>entitled Severance. Could you tell me what</b></p> <p>24 <b>that is meant to cover?</b></p> <p>25 A. That relates to payments and</p>	<p>1 <b>P. EXALL - HIGHLY CONFIDENTIAL</b></p> <p>2 ancillary -- payments to individuals.</p> <p>3 Withholding taxes and ancillary liabilities in</p> <p>4 respect of the reduction in force exercise</p> <p>5 implemented in Q4 2008 and Q1 2009 in respect</p> <p>6 of former Lehman Brothers employees.</p> <p>7 <b>Q. Okay. When I see RIF in the</b></p> <p>8 <b>source that's reduction in force?</b></p> <p>9 A. That acronym stands for reduction</p> <p>10 in force, yes.</p> <p>11 <b>Q. And what does that VIG stand for?</b></p> <p>12 A. I don't know what VIG actually</p> <p>13 stands for. It is meant to refer to the Q1</p> <p>14 2009 reduction in force exercise.</p> <p>15 <b>Q. So RIF refers to the fourth</b></p> <p>16 <b>quarter '08 reduction in force?</b></p> <p>17 A. That's my understanding.</p> <p>18 <b>Q. And the second acronym refers to</b></p> <p>19 <b>the first quarter of '09 reduction?</b></p> <p>20 A. That's my understanding.</p> <p>21 <b>Q. Okay. And you got lists of --</b></p> <p>22 <b>what do your lists show from HR? I see a</b></p> <p>23 <b>reference from HR.</b></p> <p>24 A. We maintained -- we, HR,</p> <p>25 maintained databases of payments made to</p>
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<p>1 <b>P. EXALL - HIGHLY CONFIDENTIAL</b></p> <p>2 individuals and related items on a</p> <p>3 name-by-name-basis reflecting these items</p> <p>4 totalling these amounts on the schedule.</p> <p>5 <b>Q. Okay. Now, these individuals came</b></p> <p>6 <b>to work for Barclays at or around September</b></p> <p>7 <b>22nd and had left since then?</b></p> <p>8 A. These are former Lehman Brothers</p> <p>9 employees that came and worked for Barclays</p> <p>10 and then were part of the reduction in force</p> <p>11 exercises, yes.</p> <p>12 <b>Q. Okay. So they're not -- that list</b></p> <p>13 <b>does not include people who ever came to</b></p> <p>14 <b>Barclays at all.</b></p> <p>15 A. That's not my -- I believe that to</p> <p>16 be the case, yes.</p> <p>17 <b>Q. Okay. So if they received</b></p> <p>18 <b>severance it was from Lehman, not Barclays,</b></p> <p>19 <b>correct?</b></p> <p>20 MR. GREEN: Object to the form of</p> <p>21 the question. You can answer if you</p> <p>22 know.</p> <p>23 A. I don't know.</p> <p>24 <b>Q. Okay. Fair enough.</b></p> <p>25 A. I don't know.</p>	<p>1 <b>P. EXALL - HIGHLY CONFIDENTIAL</b></p> <p>2 <b>Q. And how was their severance</b></p> <p>3 <b>calculated?</b></p> <p>4 A. The standard severance policy of</p> <p>5 Lehman Brothers was applied in respect to --</p> <p>6 in most cases in respect of former Lehman</p> <p>7 Brothers employees and the application of that</p> <p>8 policy resulted in severance payments being</p> <p>9 calculated and awarded to individuals</p> <p>10 concerned.</p> <p>11 <b>Q. Okay. Now, this is -- these</b></p> <p>12 <b>severance payments are separate from the bonus</b></p> <p>13 <b>payments we talked about earlier.</b></p> <p>14 A. Yes, they are.</p> <p>15 <b>Q. Okay. So these are -- is it</b></p> <p>16 <b>correct all of these payments have been made</b></p> <p>17 <b>to people who no longer work for Barclays,</b></p> <p>18 <b>correct?</b></p> <p>19 A. Yes.</p> <p>20 <b>Q. Now, why in the entry do we have</b></p> <p>21 <b>some severance and it looks like it's payable</b></p> <p>22 <b>in the future? Do you see the entry I'm</b></p> <p>23 <b>talking about? The \$27 million?</b></p> <p>24 A. I do.</p> <p>25 <b>Q. What is that meant to cover?</b></p>

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A. These are meant to cover exactly the same thing in that they are severance related to former Lehman Brothers employees that are part of the reduction in force exercise. But these are amounts that had not at the time of the production of the schedule either been paid or had been reconciled fully to the extent that they had -- we can trace the item to a payroll.

**Q. Can you explain that last part to me.**

A. For the most part these amounts have been paid. Have actually been discharged and the cash has left the account. The 27 million reflect payments that have not as yet been made. All are still in the process of being reconciled.

**Q. Meaning negotiating with the individuals leaving?**

A. No. Reconciling between what people originally estimated their -- an individual severance to be and what they were eventually paid on the payroll. There may be differences between those two points.

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**Q. So am I correct to say that that 27 million entails either a reconciliation issue that you just mentioned or something that's been promised to someone after they left but that's payable in the future.**

A. That's my understanding, yes.

**Q. Okay. So if I wanted to know the total amount of severance paid to former Lehman employees or to be paid to former Lehman employees I would add up the 238 and the 27 million, correct?**

A. Yes. And that would cover not only the payment made to individuals and the withholding associated with those but also an estimate for ancillary benefits and amounts that may be payable on those amounts to various regulatory bodies.

**Q. So do you have any understanding whether these severance entries related in any way to the clause 9.1(c) of the APA that we discussed earlier which talked about bonuses?**

MR. GREEN: Object to the form to the extent it calls for a legal conclusion.

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A. I don't have a specific -- I don't have specific knowledge as to how the two are tied together or not as the case may be. I'm not qualified to interpret that. What I can say is that again these are severance related to former Lehman Brothers employees related to their service with Lehman pre-acquisition.

**Q. Okay. In the Future Severance entry in your note you talk about the RIF and VIG list from HR and then you write, "And includes 25 percent for benefits for RIF."**

**What does that refer to?**

A. We have made an estimate in these amounts in this 27 million in respect of, as I mentioned earlier, payments that may be due and payable to regulatory bodies in respect of benefits or people that are on salary continuation. So these are people that don't get their severance upfront, they take it over a period of time, and they're still covered by benefits. So those are payments, estimates in respect of the benefit amounts that they're still covered for during the period of their severance.

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**Q. So is it correct to say 25 percent of the 27 million is that type of benefit?**

A. I don't know if that's the exact calculation. I haven't got an answer for that.

**Q. Okay. If you refer back to Exhibit 19 are these severance payments part of the \$2 billion in comp that you see listed there or do you have any understanding about that?**

MR. GREEN: Object. Calls for a legal conclusion.

A. I don't know what that represents. So I can't say whether those services are included or not.

**Q. When you said that you were pointing to the \$2 billion on figure 19?**

A. Described as comp, yes.

**Q. Oh, okay. When I looked at the prior version, 280B, it says Severance 2 as the title. Or is that just a typo?**

A. Typo.

**Q. Okay. And now you might have covered this already but how did the severance**



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figures change from the time you prepared the first version of this -- or version marked as 280B versus the most recent version?

I mean, I see they've gone down in terms of the payment severance version but they've gone up -- oh, no. I guess they've gone down in both instances.

MR. GREEN: Object to the form.

A. Could you just restate that question?

**Q. If I compare the two severance entries on Exhibit 280B with 281B it's fair to say the severance numbers have reduced, correct?**

A. That is correct.

**Q. And my question is why.**

A. If you aggregate them I believe the Schedule 280B, the amounts of severance total \$314 million. On Schedule 281B they total \$265 million. That's approximately a \$40 million difference.

Is that right?

\$50 million difference. Excuse

me.

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MR. GREEN: Forty-nine.

A. \$49 million. Okay.

The reason for the movement -- there are two reasons in general. One was a pure error on the spreadsheet. There were amounts paid -- there were amounts of severance that were paid to individuals that were included both in the bonus including social tax line and in the severance line. That related to approximately \$28 million that if I refer back to 280B that \$28 million was reflected in the 261 and was reflected in the 1,529.

**Q. So you're just removing the double counting.**

A. We removed the double count and moved it to the second schedule which we discovered for the reconciliation award.

**Q. Okay.**

A. The other reduction of the additional, what? -- \$21 million relates to a full -- a more full reconciliation of the severances yet to be paid. As I mentioned earlier, we were in the process of reconciling

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what original severances were estimated to be for individuals versus what was actually processed and paid ultimately to those individuals.

And in the cross-comparisons of the original database to the payroll we discovered that people had been estimated to receive severances substantially in excess to what they actually received. So the difference between A and B is a reduction as you see reflected on the schedule.

**Q. Okay. Is any of the difference between these two schedules -- the severance entries on these two schedules the result of any kind of change in policy at Barclays as to severance payments?**

A. Not at all.

**Q. Okay. And who would I ask if I really wanted specifics on that question? That would be --**

MR. GREEN: On which question?

**Q. On just severance payments.**

A. On policy or specific severance payments?

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**Q. Both.**

A. On policy I think you could direct both sets of questions through to Mr. Kerman.

**Q. Okay.**

A. Although he's not responsible for payroll. You know, he may or may not pass that question on.

**Q. But when you get the lists from HR, is he the person preparing those lists?**

A. No. It would be -- it's prepared by, you know, people within HR function.

**Q. Okay.**

A. He doesn't prepare them, no.

**Q. Well, does he supervise those who prepare them?**

A. He's the head of employee relations. I don't know whether he particularly supervised the preparation of these databases. He knows of their existence.

**Q. But am I correct -- I mean, as you've described it, it seems to be -- the difference in the two schedules appears to me to be just reconciling accounting errors or reconciliation type errors; is that right?**

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MR. GREEN: Object to form.

A. The errors -- well, the two items represent a double count of particular individuals.

**Q. Right.**

A. Which were clear errors in the production of the original spreadsheet. As well as a further reconciliation as to estimated severance amounts versus actual payments to former Lehman Brothers employees. The reconciliation effort is a -- you know, was -- is a joint effort between HR and finance professionals.

**Q. Okay. Now, if we looked at your spreadsheets over time which you said you started preparing them in the fourth quarter of '08, is it fair to assume that the severance numbers would have increased over time?**

MR. GREEN: Object to the form.

A. I don't recall.

**Q. I mean, the more people leave, the more gets paid out in severance and these numbers increase, correct?**

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A. I would be speculating. It sounds plausible but I can't answer directly. I don't have the previous schedules in front of me.

**Q. Okay. Well, my question is how do you know that these severance payments are made in respect of work they did at Lehman when they've been working for Barclays for six or eight months now? Where's the cutoff?**

MR. GREEN: Object to the form.

A. In general, severance payments are based on previous service at an employer. The vast majority of any individual receiving a severance, the vast majority of their previous service would have been in respect of Lehman Brothers, services rendered to Lehman Brothers.

**Q. So in preparing this schedule which is only supposed to reflect service or costs associated with their service at Lehman, you're assuming that the entire amount of severance paid to these individuals is in respect of their service at Lehman; is that right?**

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A. That is what I am assuming on the schedule, correct.

**Q. And theoretically at some point any severance payment they received should also include a component that relates to their work at Barclays, right?**

MR. GREEN: Object to the form.

A. Just repeat that question, please.

**Q. Well, theoretically over time if these folks worked for Barclays for a period of time, a portion of their severance has to be allocated to the work they did at Barclays as opposed to Lehman, right?**

A. That would be correct.

**Q. Okay. But you haven't made that allocation in preparing this spreadsheet?**

A. I don't believe so. I can't answer for my -- I believe that these represent amounts paid to individuals for their pre-acquisition service.

**Q. Okay. The next entry talks about the payroll tax on equity compensation.**

A. Yes.

**Q. Could you explain to me what that**

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**is?**

A. Those would be amounts due and payable to relevant tax authorities once the equity awards reflected on the schedule are vested and become vested by the employees.

**Q. So is this the three-year cliff vest you talked about?**

A. Yes.

**Q. So three years from now there will be some kind of obligation to regulatory authorities based on individuals' receipt of their stock bonus?**

A. That's my understanding.

**Q. And the 1.79 percent what is that based on?**

A. That's an estimate made by finance based -- you'd have to ask them. My understanding is it's based on a blended rate of tax which is standard practice across Barclays Capital.

**Q. Okay. And then what is that -- 1.9 percent of what?**

MR. GREEN: 1.79 percent you mean?

**Q. I'm sorry. 1.79 percent of what?**

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A. It relates to the \$258 million of -- in the equity column of bonuses including social taxes. I should point out here if you do a calculation of 1.79 on the 258 you don't get 9.

**Q. Right. That's my question.**

A. The difference is the growth in the Barclays stock price subsequent to the award being made. The tax will be payable, due and payable, based on the ultimate value of those awards when the vest. So that 9 could increase over time.

**Q. Well, so this 1.79 assumes a growth in the value of the stock that's vesting over that three-year period, right?**

A. The 1.79 is the blended -- my understanding is that the 1.79 is the blended rate applied to the equity award respect of tax.

**Q. Right.**

A. You will notice that's being increased by a multiple of 2 on the spreadsheet.

**Q. Right.**

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A. The reflects the fact that between the date of award of these stock -- these amounts of stock and the date at which these schedules were prepared, the stock price of Barclays underpinning the value of these awards had roughly doubled.

**Q. From when to when? From September --**

A. These stock awards were made in May 2009. And the schedule is done as you see it with all these -- it is an estimate of a liability that is due and payable at some future time. That liability may or may not be \$9 million. It could be different.

**Q. Okay. But at present you're estimating it at 9 million.**

A. That's correct.

**Q. And that's assuming or it's based on an increase in the value of the Barclays stock which is the item that you multiple by 1.79.**

A. My calculation would be the \$258 million multiplied by 1.79 percent times 2, the 2 factor representing the growth of the

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Barclay stock price.

**Q. Okay. And now this \$9 million doesn't get paid to former Lehman employees, right? It gets paid to regulatory authorities around the globe?**

A. Yes.

**Q. The next entry talks about acquisition buyout vesting over two years.**

**Do you see that?**

A. I do.

**Q. \$53 million. What is that meant to encompass?**

A. As described here, it's a bonus relating to pre-acquisition performance by an individual or individuals that worked for Lehman Brothers and now work for Barclays. These are commitments that we assumed and embodied in contracts in respect of this individual or individuals to deliver this \$53 million over the next two years.

**Q. Okay. Now, let's turn back to Mr. Lowitt's contract.**

A. Yeah.

**Q. Do you see the special cash award**

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**to be awarded over two years?**

A. I do.

**Q. Is that this 50 -- part of this \$53 million you're talking about?**

A. No.

**Q. Okay. So I don't see any other entries here that could be that. You're saying that he's not one of the recipients of the \$53 million that you're talking about here?**

A. No, he is not.

**Q. Okay. And who is getting that money?**

MR. GREEN: You can go ahead and answer.

A. A gentleman by the name of Mr. Jonathan Hoffman.

**Q. And who is he?**

A. He is a principal trader in the global markets business at Barclays Capital.

**Q. And why is he getting this money?**

A. The amount was owed -- was due and payable to him by Lehman Brothers under his contract with Lehman Brothers pre-acquisition.

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2 Barclays assumed that liability as part of the

3 acquisition process and embodied these amounts

4 of that compensation amongst others in that

5 contract and those amounts are due and payable

6 to him over time as specified in that

7 contract.

8 Q. Okay. Now, this is all -- the

9 entire 53 million goes to this one individual?

10 A. That is correct.

11 Q. Over a three-year period?

12 A. He receives two tranches of \$20

13 million in February '10 and February '11. And

14 the additional 13 will effectively be

15 delivered in February of 2010.

16 Q. Okay. When I -- just for

17 clarification when it says February '10 that

18 means February 2010?

19 A. That's correct.

20 Q. And February '11 means February

21 2011?

22 A. That is correct.

23 Q. And maybe you explained this but

24 is this -- what is this to reflect as far as

25 his performance at Lehman?

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2 A. That's correct.

3 MR. GREEN: Well, could we go off

4 the record for one second? Because I

5 think the record is unclear. Or I can

6 add a clarification.

7 MR. HINE: You want to add a

8 clarification?

9 MR. GREEN: But I don't want to

10 testify.

11 MR. HINE: No, no. You can take a

12 break.

13 MR. GREEN: Take a short break.

14 (Recess taken.)

15 MR. HINE: Let's go back on the

16 record.

17 A. A clarification of the previous

18 question perhaps is relevant. The amounts --

19 the amounts payable to Mr. Hoffman were

20 amounts that were due and payable to him under

21 the contract with Lehman Brothers. And the

22 clarification is they had not as yet at that

23 time been paid to him at all. They were just

24 due and payable to him. He hadn't received

25 any of that compensation.

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2 A. He was owed -- under his contract

3 with Lehman Brothers, that was the amount due

4 and payable to him -- well, that is not the

5 entire amount. But that is the amount

6 included on this spreadsheet. Well, the

7 entire amount is included on this spreadsheet.

8 There's another element sitting in bonus

9 including social taxes. The 53 million

10 represents the amount outside of the bonus

11 including social taxes amount and is in

12 respect -- the entire amount is in respect of

13 the contract that he had at Lehman Brothers

14 which guaranteed him a payout on his trading

15 performance. And the amount relates to the

16 trading performance he did, for want of a

17 better word, pre-acquisition.

18 Q. Okay. So this is a con -- he had

19 a contract with Lehman that provided him X

20 amount of compensation based on his trading

21 performance and this number is the amount due

22 and payable to him up to September 22nd, 2008

23 under that contract?

24 MR. GREEN: Object to the form of

25 the question.

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2 Q. So Barclays undertook that

3 obligation to pay him what he was owed by

4 Lehman.

5 A. That is correct.

6 Q. Okay. But in your note here it

7 says bonus relating to performance for one

8 January to 22 September '08.

9 Do you see that?

10 A. I do.

11 Q. Then it says but with future time

12 served criteria and a portion linked to future

13 production.

14 What does that mean?

15 A. I can't -- I'll give you my

16 general interpretation of the terms. The

17 specific legal interpretation of the

18 forfeiture clauses I can't really speak to all

19 that.

20 Q. Sure.

21 A. The intention was to deliver two

22 payments or two tranches of \$20 million in

23 each of February 2010 and February 2011.

24 Those payments could be reduced -- each

25 payment could be reduced by up to 10 million

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2 should Mr. Hoffman had made losses in his  
3 trading for Barclays Capital post-acquisition.

4 So for all intents and purposes we  
5 promised Mr. Hoffman to pay him \$20 million.  
6 10 million of that 20 -- of each of the 20  
7 could be re -- that 20 million could be  
8 reduced by up to 10 million should he have  
9 made losses for Barclays Capital in the  
10 performance period subsequent to the  
11 acquisition.

12 Q. So part of the 53 is based on his  
13 performance at Barclays, right?

14 MR. GREEN: Object to the form.

15 A. No. The entire fee is based on  
16 his pre-acquisition performance. The delivery  
17 of the residual 53 is to an extent relative to  
18 his trading performance at Barclays.

19 Q. All right. So am I correct to  
20 say -- and how much is at issue with respect  
21 to his performance at Barclays? I thought you  
22 said 10 million --

23 A. 10 million of each of the 20 --  
24 again, you would need a lawyer to interpret  
25 the contract.

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2 Q. Sure. Sure.

3 A. I'm giving you a general  
4 intention, and my interpretation personal and  
5 it may or may not -- somebody may or may not  
6 agree with that or not. Ten of the 20 -- of  
7 each 20 was subject to forfeiture depending on  
8 the extent of Mr. Hoffman's loss -- trading  
9 loss for Barclay in each of those years. And  
10 the \$13 million is also subject to him having  
11 made money for Barclays subsequent to his --

12 Q. So am I correct to say that the 53  
13 million is based on his pre-acquisition  
14 performance at Lehman but Barclays'  
15 willingness to assume that liability is in  
16 part based on how well he performs at  
17 Barclays?

18 MR. GREEN: Object to the extent  
19 it calls for a legal conclusion.

20 A. Barclays assumed the entire  
21 liability and has structured some terms and  
22 conditions around the delivery of that  
23 liability.

24 Q. Well, but that's a modification to  
25 the agreement he had at Lehman, right?

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2 A. The two agreements are distinct  
3 and separate. They're two individual  
4 contracts that stand alone.

5 Q. Okay. But Barclays assumes a  
6 \$53 million obligation based on his work prior  
7 to the acquisition, right?

8 A. That's correct.

9 Q. But Barclays' willingness to pay  
10 that is contingent on at least in substantial  
11 part on how well he performs for Barclays  
12 thereafter, correct?

13 A. That is correct. As well as Mr.  
14 Hoffman being in employment with Barclays at  
15 the time.

16 Q. Okay. So he has to stay an  
17 employee at Barclays at least through the  
18 third payment.

19 A. I don't know that for certain.  
20 Again, I can't interpret the specific leaving  
21 clauses or termination clauses under his  
22 agreement. But in general that's -- you know,  
23 I would say it's based on future time served  
24 criteria as well trading performance.

25 Q. Okay. And so is there an

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2 individual agreement with this Mr. Hoffman?

3 A. Yes, there is.

4 Q. Okay. And -- okay. Is there  
5 anything else in this entry of 53 million  
6 other than the Mr. Hoffman deal?

7 A. Nope.

8 Q. Okay. I had a follow-up question  
9 on the -- you had previously talked about the  
10 social tax and the payroll tax in certain of  
11 these entries. Do you remember that?

12 A. Yes.

13 Q. And I didn't understand whether  
14 you're talking about -- when you have an entry  
15 for one of those taxes, are you talking about  
16 the withholding obligation of Barclays or  
17 Barclays' own obligation to pay those  
18 authorities?

19 I don't know if that's a clear  
20 question but --

21 A. No, it's not.

22 MR. GREEN: Object to the form.

23 Q. Barclays has an obligation to  
24 withhold personal income tax as to certain  
25 individuals, right?



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A. Yes.

**Q. So when you have an entry in here on payroll tax, for example, is that -- where it says payroll tax on equity compensation, do you remember that discussion?**

A. Yes.

**Q. Is that just a withholding tax or is it an obligation of Barclays to pay the tax authorities?**

MR. GREEN: Object to the form.

A. I actually don't know the answer to that. It is a tax that's due and payable to the regulatory authorities. As to whom that liability relates, I don't know.

**Q. Okay. And would that be the same answer with respect to the social tax up in the bonus entry?**

A. Yes.

**Q. Okay.**

A. What I can say is that the withholding taxes that you referred to that are -- these are the gross amounts payable to those individuals in terms of -- so if I refer again back to Mr. Lowitt's contract, we've got

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to pay him a cash advance of \$4.56 million.

That's a gross amount payable to him. He in his individual capacity has to pay income tax which we will withhold in entirety. The entire 4.56 is embodied in the 1,271 cash component effectively.

**Q. Okay. And I don't think I asked you this but if we go to that bonus entry with social tax, do you see that?**

A. Yes.

**Q. The 1.529 billion. Could you give me a percentage -- how much of that is the social tax portion and how much is the actual bonus paid to that individual?**

MR. GREEN: Object to form.

**Q. Gross bonus paid to that individual.**

A. I don't have the exact amount but I would categorize it as not significant.

**Q. Can you ballpark percentages?**

A. Crickey.

If I had to guess I'd say maybe \$50 million.

**Q. \$50 million? Okay. And --**

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A. And the reason I say that -- and, again, not being a payroll professional I can't speak for every social tax that may or may not be payable as part of a payroll.

**Q. Sure.**

A. But one of the -- the only one is the FICA taxes that are payable to the US tax authorities in whichever form that may be. That's -- I know is 1 point something percent. It's a very small percentage. So I'm basing my estimate on that primarily.

I do not believe that that -- if I was to look at that line and if you -- I would categorize the social tax item as being not significantly material.

**Q. Okay. And there are documents somewhere at Barclays that would specify how much that social tax is with respect to those bonuses?**

A. Yes.

**Q. Okay. How about the payroll tax on equity compensation?**

A. What's your question?

**Q. That's a separate entry so I don't**

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**need to ask that question. I apologize. I misunderstood that.**

A. Okay.

**Q. Okay. The payroll tax on acquisition buyout, what is that?**

A. The \$3 million reflected on the schedule, I believe or I understand the calculation to be similar to the one referenced in the payroll tax and equity tax line in compensation of \$53 million shown directly above it on the schedule.

**Q. So that relates only to Mr. Hoffman's deal with Barclays?**

A. That's my understanding.

**Q. And that money doesn't get paid to him; it he gets paid to a regulatory authority?**

A. That's my understanding.

**Q. Can we skip down to ISP awards. Could you explain to me what that is?**

A. The acronym?

**Q. Yes.**

A. The ISP stands for incentive share plan. It is a stock award program -- it's the

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<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 name of the stock award program we have in</p> <p>3 place at Barclays and which we will utilize to</p> <p>4 make these relevant awards.</p> <p>5 Q. Is this a plan that was in place</p> <p>6 at Lehman prior to the acquisition?</p> <p>7 A. This plan was not in place at</p> <p>8 Lehman, no. They had similar stock award</p> <p>9 programs under their own compensation schemes.</p> <p>10 Q. Okay. And so what is this</p> <p>11 \$56 million being paid for?</p> <p>12 A. Okay. So these -- the \$56 million</p> <p>13 directly relates to the \$258,000,000 further</p> <p>14 up in the Equity column under Bonus Including</p> <p>15 Social Taxes.</p> <p>16 The sequence of events was as</p> <p>17 follows. Under normal Barclays policy stock</p> <p>18 awards are made in March of every year. So</p> <p>19 under the normal practice Barclays would have</p> <p>20 made stock awards to individuals in March of</p> <p>21 2009 in respect of their 2008 annual bonuses.</p> <p>22 Q. Okay.</p> <p>23 A. The stock awards for various</p> <p>24 reasons were made in May 2009. The value of</p> <p>25 the awards -- well, because of the unforeseen</p>	<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 and unanticipated delay in making the awards</p> <p>3 to individuals, during that period the stock</p> <p>4 price at Barclays appreciated substantially</p> <p>5 and in effect individuals received an amount</p> <p>6 of stock units of less than what they would</p> <p>7 have received had the awards been made under</p> <p>8 the normal process in March 2009 because of</p> <p>9 the increase in the stock price.</p> <p>10 The \$56 million reflects</p> <p>11 additional shares awarded to those -- to</p> <p>12 former Lehman Brothers employees and the</p> <p>13 awards were not exclusive to former Lehman</p> <p>14 Brothers employees. This just reflects the</p> <p>15 component related to former Lehman Brothers</p> <p>16 employees to compensate them for that loss of</p> <p>17 value that they had suffered as a result of</p> <p>18 the normal process not having been followed in</p> <p>19 that particular year.</p> <p>20 Q. So just so I understand why --</p> <p>21 what caused the delay in the award of the</p> <p>22 bonus -- of the stock bonuses?</p> <p>23 A. I can't speak for the specific</p> <p>24 reason why. I know there was a delay.</p> <p>25 Q. Was it related to the</p>
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<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 Barclays/Lehman acquisition?</p> <p>3 A. No. Not to my knowledge.</p> <p>4 Q. Okay. So this -- if I understand</p> <p>5 you correctly, this \$56 million only relates</p> <p>6 to stock awards granted to former Lehman</p> <p>7 employees, right?</p> <p>8 A. This \$56 million dollars, yes.</p> <p>9 Q. All right. And it's to compensate</p> <p>10 them for the delay in awarding that award from</p> <p>11 March until May.</p> <p>12 A. That's correct.</p> <p>13 Q. But aren't the Lehman Brothers</p> <p>14 employees granted their award back in</p> <p>15 September?</p> <p>16 A. They were given a value, a dollar</p> <p>17 value of award. When it comes to granting an</p> <p>18 amount of stock units they get an amount of</p> <p>19 stock units based on the prevailing share</p> <p>20 price at the time of the award grant.</p> <p>21 So they would have received --</p> <p>22 I'll give you a hypothetical example. An</p> <p>23 individual would have had \$100 worth of stock</p> <p>24 of value that was to be delivered to him in</p> <p>25 March of 2009. Assume the stock price in</p>	<p>1 P. EXALL - HIGHLY CONFIDENTIAL</p> <p>2 March 2009 was a dollar. He would have got a</p> <p>3 hundred shares. Those awards were never made</p> <p>4 in March. What happened was they were made in</p> <p>5 May. In May let's assume for argument's sake</p> <p>6 the stock was \$2. He would only have got 50</p> <p>7 shares. He got -- and he's lost the stock</p> <p>8 price appreciation he would have got on the</p> <p>9 hundred shares had he been awarded them three</p> <p>10 months prior.</p> <p>11 The \$56 million is to compensate</p> <p>12 him for that loss of value in the respect of</p> <p>13 the fewer amounts of shares that he ultimately</p> <p>14 received.</p> <p>15 Q. Okay. So it's actually the --</p> <p>16 it's the value of the appreciation of the</p> <p>17 stock he would have received from March to</p> <p>18 May.</p> <p>19 A. It's not the entire value. It's</p> <p>20 to compensate him for that loss of value. I</p> <p>21 don't believe that the entire value is</p> <p>22 reflected in this number. It was to</p> <p>23 compensate him for an extent of that, yes.</p> <p>24 Q. Well, here's my question. If he's</p> <p>25 granted in September \$100 worth of stock bonus</p>

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he would have gotten a hundred shares in March -- or he would have gotten a hundred shares in March if the price was a dollar using your hypothetical, right? He would also have gotten his hundred shares in May if he gets 50 shares at \$2. Why --

MR. GREEN: Object to the form.

**Q. Well, I'm trying to use your hypothetical.**

**A. My hypothetical is that he would not have got the hundred shares in May. He would have only got 50 shares in May.**

**Q. But it would be worth \$2 at that time.**

**A. That's correct. The value would have been the same. But he has lost that. Rewind to March. If he had been awarded the shares in March he would have a hundred shares worth a dollar. Those shares by May would have been worth 200 at the stock price of 2.**

**Q. Okay.**

**A. You're giving him only a hundred of value in May.**

**Q. Okay.**

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**A. That's the difference.**

**Q. I see. So this is done not only for the former Lehman employees. It's also done for all the other Barclays employees who suffered this same type of loss, right?**

**A. They were granted for the majority -- for other Barclays Capital employees that received stock awards at the time for the most part, yes.**

**Q. So this is not --**

**A. This is a subset of a wider population.**

**Q. This program, this ISP award was not granted to former Lehman employees. It was granted Barclays wide to those who qualified, right?**

**A. To my knowledge, it was not granted Barclays wide. It was Barclays Capital wide.**

**Q. Okay.**

**A. I don't -- I can't testify as to if it was that specific, but there were more individuals concerned than this. I cannot say it was a Barclays wide policy. I don't know**

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that to be true.

**Q. But it's not a former Lehman employees policy only.**

**A. Not only, no.**

**Q. Okay. So then why is this award -- how is this award related to the work they performed at Lehman? Because, I mean, basically it's compensating them for a delay in a stock payment while at Barclays.**

MR. GREEN: Object to the form.

**A. The amount of the award is derived directly from the equity awards that would have been made under the normal course of business. And insofar as they are related to pre-acquisition service on behalf of Lehman Brothers, these -- the value of these awards, the economic cost of these awards relate to that pre-acquisition service. It relates to the delivery of the stock component of compensation in many cases embodied in contracts such as Mr. Lowitt's here. Had they been awarded in the normal course of business in March of 2009.**

**Q. Okay. But --**

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**A. They all relate to the awards embodied -- well, if I take Mr. Lowitt as an example, any additional shares he would have been awarded under that program relate to the 2008 EPP recommendations that embodied in his contract and the value thereof.**

**Q. I understand how they relate to it. But the award -- isn't it true that the award itself of the ISP is to compensate them for mistakes or whatever problems occurred at Barclays that caused this delay from March to May, right?**

MR. GREEN: Object to the form.

**A. I can say that the \$56 million has nothing to do with post-acquisition service of Barclays PLC. It has everything to do with the services that they provided pre-acquisition to Lehman Brothers.**

**Q. I'm not sure you've answered my question. I understand that the 258 million comes from their pre-acquisition services. But this additional 56 million, isn't it the case, is paid to them because of some mistakes or whatever happened at Barclays that caused**

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<p>1 <b>P. EXALL - HIGHLY CONFIDENTIAL</b></p> <p>2 <b>this delay in awarding the bonus, right?</b></p> <p>3 MR. GREEN: Object to the form.</p> <p>4 A. It directly relates to the \$258</p> <p>5 million insofar as the \$56 million is derived</p> <p>6 specifically from the \$258 million reflected</p> <p>7 on the schedule.</p> <p>8 Q. All right. I understand how it's</p> <p>9 derived from the 258 million and I understand</p> <p>10 how the 258 million is derived from their</p> <p>11 pre-acquisition work. But the 56 million is</p> <p>12 not compensation for pre-acquisition work.</p> <p>13 MR. GREEN: Asked and answered.</p> <p>14 Bill, I think you've asked this question</p> <p>15 three times and he's given you his</p> <p>16 answer.</p> <p>17 MR. HINE: Well, I'm getting what</p> <p>18 seems to be an evasive answer.</p> <p>19 MR. GREEN: No. He's given you an</p> <p>20 answer and it's an entirely appropriate</p> <p>21 answer and there's no reason to ask it</p> <p>22 until you get the answer you want.</p> <p>23 MR. HINE: All right. I just want</p> <p>24 an answer to the last one I asked.</p> <p>25 MR. GREEN: Could you repeat the</p>	<p>1 <b>P. EXALL - HIGHLY CONFIDENTIAL</b></p> <p>2 question?</p> <p>3 (Record read.)</p> <p>4 Q. Is that right?</p> <p>5 A. No. In my personal opinion it is</p> <p>6 not. The \$56 million would have been</p> <p>7 valued -- would have accrued to these</p> <p>8 individuals had they received their stock</p> <p>9 awards under the normal course of business.</p> <p>10 It was directly compensation related to</p> <p>11 pre-acquisition services in relation to Lehman</p> <p>12 Brothers as derived from the shares that they</p> <p>13 would have got had the normal course of</p> <p>14 business been followed.</p> <p>15 Q. Okay. Now, the payroll tax on</p> <p>16 those awards, what is that?</p> <p>17 A. The calculation of those again is</p> <p>18 an accounting -- is an estimate similar to the</p> <p>19 one reflected previously on the schedule</p> <p>20 entitled Payroll Tax on Equity Compensation.</p> <p>21 Q. So same method of estimating only</p> <p>22 now you're estimating it based on 56 million?</p> <p>23 A. That's correct.</p> <p>24 Q. Okay. Back to the 56 million for</p> <p>25 a second. It says here Additional shares</p>
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<p>1 <b>P. EXALL - HIGHLY CONFIDENTIAL</b></p> <p>2 <b>awarded at 25P. What does that P mean?</b></p> <p>3 A. Pence. English pence. English</p> <p>4 pounds.</p> <p>5 Q. So is that the equivalent of</p> <p>6 25 percent?</p> <p>7 A. Yes. 25 cents on the dollar.</p> <p>8 Q. Okay. So 25 cents on the dollar</p> <p>9 as measured against the value of a Barclays</p> <p>10 share from March to May?</p> <p>11 A. No. That's not correct. So if</p> <p>12 you related back to the 258 it's roughly a</p> <p>13 quarter.</p> <p>14 Q. Oh, I gottcha. 25 cents on the</p> <p>15 dollar as compared to the 258 million.</p> <p>16 A. That would be correct.</p> <p>17 Q. Okay. And 25 cents is not total</p> <p>18 compensation for the value increase in</p> <p>19 Barclays' share but it's a portion of the --</p> <p>20 it's based on the -- as a portion of the</p> <p>21 increase in Barclays' share price from March</p> <p>22 to May?</p> <p>23 MR. GREEN: Object to form.</p> <p>24 A. I don't recall the loss of value</p> <p>25 or the notional loss of value. I don't recall</p>	<p>1 <b>P. EXALL - HIGHLY CONFIDENTIAL</b></p> <p>2 the exact amounts. I don't believe it's an</p> <p>3 exact lack-for-lack replacement. I can't</p> <p>4 speak to whether it was more or less but I</p> <p>5 believe it was less.</p> <p>6 Q. Okay. Substantially less or</p> <p>7 just --</p> <p>8 A. I don't recall.</p> <p>9 Q. Okay. But if I wanted to find</p> <p>10 that out I would take the share price from</p> <p>11 Barclays in March and compare it to May?</p> <p>12 A. You would think so. That's not</p> <p>13 practically how things work. The stock awards</p> <p>14 at any point in time are generally based on an</p> <p>15 average stock price calculated over a number</p> <p>16 of days in which stock would have been</p> <p>17 purchased in the market to hedge the awards.</p> <p>18 So there is a process underpinning</p> <p>19 it. There is some math -- there is</p> <p>20 mathematical calculations behind all this that</p> <p>21 had been produced. But you can't simply just</p> <p>22 take a spot price at a point in time.</p> <p>23 Q. I gottcha.</p> <p>24 Now, if I look at the bottom line</p> <p>25 it says Total Spend. Do you see that?</p>

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A. I do.

**Q. That is -- that's not what Barclays has spent to date, correct? Because that includes future payment.**

MR. GREEN: Object to the form.

A. Not all those cash payments have been made, no.

**Q. Okay. In other words, if I wanted to know the total amount that has been paid to date, I would look up to the \$1.543 billion number?**

A. On this schedule that would be correct. I would suspect that on further reconciliation some of the 27 million reflected as severance under the payable in the future may well flip up into the previous category.

**Q. Okay.**

A. And obviously as time moves on other amounts will.

**Q. Well, in the course of working on the compensation for these former Lehman employees were you aware that there's a provision in the APA that required them to be**

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**paid by March 15th of 2009?**

MR. GREEN: Object to the form.

A. I've seen the date March 15th, 2009. I'm unsure as to what that obligates Barclays to do or what it doesn't obligate Barclays to do.

**Q. Okay. So, in other words, the March 15th, 2009 date is not something you've been shooting to comply with in the course of compensating these employees?**

MR. GREEN: Object to the form of the question. Are you speaking to him personally?

MR. HINE: Well, he's not paying them. Barclays is paying them.

MR. GREEN: Okay. So --

**Q. Is the March 15th, 2009 date something that Barclays has taken into consideration when it's paid these employees these various forms of compensation?**

MR. GREEN: Object to the form.

You may answer if you know.

A. I don't know specifically whether we've taken -- it's a date that we know of.

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But I can't answer for the specific wording of your question when you refer to paid. Can you rephrase that perhaps in some different way?

**Q. Yeah, let's try this. You see the entry for bonuses, bonus including social tax?**

A. Excuse me. Oh, sorry. On the schedule?

**Q. On the spreadsheet.**

A. Yes.

**Q. Was that all paid or committed by March 19th, 2009?**

A. The cash amounts -- certainly I would say the vast majority if not all, but there's always an exception. People sometimes don't want to be paid at a particular point in time. Those cash amounts would in the majority have been paid and discharged by that time.

**Q. Okay.**

A. The equity awards, again, I've explained to you the delay in the award of value -- the award of the amount of shares. But I believe that at the time of bonus there were compensation communications for employees

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they would have been aware of the value of that stock.

**Q. Okay.**

A. As opposed to the amount of units they would receive. But, again, I'm not specific on the date.

**Q. And the delay you talked about was the one you previously mentioned from March to May?**

A. That's correct. In terms of the equity awards, yes.

**Q. Any other entries on this spreadsheet that were made before March 15th 2008 -- 2009?**

A. March 15th? Sorry? Could you say that again? Sorry. I missed the question.

**Q. Were any other entries on this spreadsheet paid before March 15th, 2009?**

MR. GREEN: Objection to form.

You may answer if you know.

A. Yes. There were entries on the spreadsheet prior to March 15th, 2009.

**Q. Like what?**



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A. An example would have been severance payments made to individuals terminated under the RIF, reduction in force program in Q4 2008 and Q1 2009 as one example.

**Q. Okay. Any others?**

A. There are likely to be some bonus advances that were made to particular individuals that are included in the 1,271 number which is bonus to clean social taxes. They may well have been paid prior to the 15th of March 2009.

**Q. Okay. Any others?**

A. Off the -- obviously, the pre-22/9 payroll items would have been discharged and paid prior to the 15th of March 2009.

**Q. Why? When were they paid?**

A. Well, as I've said to you 5 million of the \$12 million relate to payrolls that had to be made in September of 2008.

**Q. So they were paid in September 2008.**

A. That's my understanding.

**Q. Okay. And the ex-pat regulatory sum of \$7 million, that was --**

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A. I don't know exactly when that was paid.

**Q. Okay. Could you turn to the APA again. Section 9.1(c).**

A. (Witness complies.)

**Q. And I know you're not a lawyer and I'm not trying to trip you up here but if you refer to the section where it says -- do you see the sentence about a third of the way down the paragraph that starts, "Any amounts that would have been allocated in respect of any transferred employee who voluntarily terminates employment before such award is made shall instead be allocated among the remaining transferred employees."**

**Do you see that?**

A. I do.

**Q. Did that ever happen?**

MR. GREEN: Objection to form.

You can answer if you know.

A. I don't know. Did what ever happen?

**Q. Well, did someone who was supposed to get a bonus, for example, and voluntarily**

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terminated did the bonus that he was supposed to get thrown back in and get distributed among the remaining transferred employees?

A. I don't know. I mean, there were people that resigned.

**Q. Yeah.**

A. And they got nothing as they left.

**Q. Okay. Let me give you a specific question then.**

MR. HINE: Let's mark this.

(Deposition Exhibit 282B, document

bearing production numbers

BCI-EX-00113161 through BCI-EX-00113163,

marked for identification as of this

date.)

BY MR. HINE:

**Q. Mr. Exall, I'm handing you a copy of an exhibit marked 282B which appears to be a form of employment contract offered to Mr. McDade dated December 18th, 2008. It has Bates stamps BCI-EX 00113161 through -63.**

**My first question is have you ever seen this document before?**

A. I may have seen it. I don't

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recall.

**Q. Do you know if Mr. McDade signed this employment contract with Barclays?**

A. No, I don't.

**Q. You don't know?**

A. I don't know.

**Q. Okay. Just as an aside, do you see the date is September 18th, 2008?**

A. I do.

**Q. Which is prior to the September 22nd closing.**

**Do you know how many Barclays employees were offered employment contracts before the closing?**

A. Before the 22nd of September?

**Q. Yeah.**

A. No. I don't know.

**Q. Do you know how I could find that out? Would Mr. Evans know that?**

A. He wouldn't know off the top of his head. I guess it's a request you could make. And it could be found out. It's possible.

**Q. Okay.**

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A. We could count contracts.

Q. Do you know if there was any effort to offer employment terms to the -- what I've seen called as the Elite 8 or the top eight people at Barclays prior to the closing?

MR. GREEN: Object to the form of the question. When you say closing what date are you referring to?

MR. HINE: I'm talking about September 22nd, 2008.

A. Sorry. Could you repeat the question?

Q. Are you aware of any efforts to offer employment or to discuss the terms of employment with former Lehman executives prior to September 22nd?

A. I have no direct knowledge. I wasn't involved in any negotiations with any of these employees.

Q. Okay. Have you heard anything about that?

A. I don't recall.

Q. Do you have any understanding

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about former Lehman executives who signed employment contracts with Barclays prior to September 22nd, 2008?

A. Do I have any what? Sorry.

Q. Understanding.

A. What does that mean?

Q. Well, do you have any knowledge that, for example, Mr. Lowitt signed his contract before the closing?

A. I've never examined the contracts in that respect, no.

Q. Well, I didn't ask you if you examined the contracts. Do you have any understanding about whether any of the senior executives at Lehman were signed up by Barclays before the closing?

A. I don't know.

Q. Okay. Back to Mr. McDade's --

A. Okay.

Q. Whether he signed it or not I'm not really sure, but my question is you'll see in this document it refers to a cash bonus of 2008, right? A 2008 EPP recommendation. Do you see that?

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A. I see that.

Q. Do you see the special cash award?

A. I do.

Q. Now, did Mr. McDade -- Mr. McDade resigned, correct?

A. I don't know how -- I don't know the circumstances around Mr. McDade's joining or not or leaving or not from Barclays.

Q. You don't know whether he was terminated for cause or without cause.

A. I have no knowledge of his arrangements, no.

Q. Okay. Do you have any knowledge of any individual that was supposed to be offered awards like this who then left and my question is what happened to that award money?

MR. GREEN: Object to the form.

A. I don't understand the question.

Q. Well, if you look back at 9.1(c) it purports to say -- it appears to say that their award money should go back into the pool and be shared among the all the transferred employees and my question is did that in fact ever happen?

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MR. GREEN: Objection to form.

Calls for a legal conclusion.

A. I don't know what Section 9.1(c) obligates Barclays to do so I can't answer that question.

Q. Okay. You don't know one way or the other?

A. I don't have an opinion on that.

Q. Okay. If you skip down further in that paragraph, 9.1(c), you'll see it starts with the word "however" and then from there to the end of the paragraph it talks about a circumstance where perhaps more than 10 percent of the transferred employees voluntarily terminate.

Do you see that?

A. I do.

Q. Am I safe to assume that that did not happen in connection with the Barclays/Lehman transaction?

MR. GREEN: I just want to caution the witness to read the exact language you're referring to.

Q. It says, "However, the accrued '08

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**FY liability shall be reduced if..."**

MR. GREEN: All the way to the end of the paragraph?

MR. HINE: Yes.

MR. GREEN: Okay. Take your time to read that.

**Q. Take your time to read that but my question is did that ever happen or are you aware of that clause ever being invoked or that many people ever left. So just take your time to read it.**

MR. GREEN: Object to the form before he answers the question. (Document review.)

A. I can't speak for the obligations that this places upon Barclays. I don't know what those are. I can't interpret it.

Perhaps I can answer in a different way. I don't know what it means by voluntarily terminated. That would be my question. I don't know what exactly you're asking me to answer.

**Q. Well, I understand you're not a lawyer and I'm not trying to ask for any legal**

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**interpretation. Is it correct to say that in the course of your employment in your present position you haven't heard anyone say, Oh, more than 10 percent of the people left, we should reduce the bonus pool?**

MR. GREEN: Object to form.

**Q. Or words to that effect?**

A. No one has said that to me, no.

**Q. Okay. Did you understand that anyone was ever considering that?**

A. My understanding is that this is a clause in the APA and people are aware of it and relevant people know what that means. It is a consideration. It has been considered. I do know that.

**Q. But did more than 10 percent of the employees voluntarily terminate?**

MR. GREEN: Object to form.

A. I can't answer -- I can't give you a factual answer because I don't know the extent to which -- I don't know what you're defining as voluntary termination. Perhaps that means resignation. I don't know what this actually refers to. I've never heard

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someone -- I've never personally heard someone say that the section of the clause would apply.

**Q. Okay. And you don't have -- in your experience working in the compensation field you don't have an understanding of what voluntarily terminate means?**

A. If you're asking for what I understand by voluntarily termination I can give you my view, my personal view, and that may be different than the interpretation of the APA or the position taken by Barclays.

My view is that that refers to voluntary resignations by former Lehman Brothers employees that decided post-acquisition that they no longer wanted to be employed by Barclays Capital and hence resigned.

**Q. Okay. And in your view did more than 10 percent of the transferred employees do that?**

A. I would like to -- well, I don't know the exact number or the exact proportion. I would -- I'd leave it at that. I don't know

**P. EXALL - HIGHLY CONFIDENTIAL**

the exact number or exact proportion but -- leave it at that.

**Q. Is it your sense that more than 10 percent have resigned?**

MR. GREEN: Object. Calls for speculation.

A. If you want me to speculate I will. I will speculate that not more than 10 percent had voluntarily resigned under these -- post-acquisition.

**Q. Okay. Fair enough. Thank you.**

A. I mean there would be other points in time. That's not to say that in the future that if you aggregated it all up --

**Q. Sure.**

A. Right?

**Q. But you're speaking as of today.**

A. I'm speaking as of today. To the best of my knowledge, yes.

MR. GREEN: Speculating as of today, I might add.

A. Speculating as of today, that's correct.

MR. GREEN: To the best of your --

P. EXALL - HIGHLY CONFIDENTIAL

A. To the best of my speculation.

Q. Is it fair to say you don't have any personal knowledge or understanding about the circumstances of Mr. McDade leaving?

A. No direct knowledge, no.

Q. Do you have any indirect knowledge?

A. I don't know how or under what circumstances he left, no.

Q. Do you know how or under what circumstances he received any compensation from Barclays?

A. I don't believe he received any compensation from Barclays. I don't know that for fact. But that is my general understanding.

Q. Okay. Well let me introduce this as an exhibit and maybe it will prompt a further question.

(Deposition Exhibit 283B, document bearing production number BCI-EX-00113194, marked for identification as of this date.)

P. EXALL - HIGHLY CONFIDENTIAL

BY MR. HINE:

Q. Mr. Exall, I'm handing you a copy of a document marked as Exhibit 283B which appears to be a W-2 statement in connection with -- issued by Barclays to Mr. McDade and my only question is whether this provides any assistance to you in trying to figure out whether Barclays paid Mr. McDade anything.

MR. GREEN: Object to the form of the question. The document speaks for itself.

MR. HINE: Okay.

MR. GREEN: Are you asking does it refresh his recollection?

MR. HINE: Yes.

A. I've never seen this document.

Q. Do you know why Mr. McDade was paid anything if at all by Barclays?

A. I have no idea. As I've said before, I have no knowledge of his arrangements.

Q. Fair enough.

(Deposition Exhibit 284B, document bearing production numbers

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BCI-EX-(S)00027190 through  
BCI-EX-(S)00027197, marked for  
identification as of this date.)

BY MR. HINE:

Q. Mr. Exall, I've handed you a copy of a document marked as Exhibit 284B which is an e-mail dated September 23rd and the attachment thereto is Bates stamped BCI-EX-00027719 through -197. And my first question after you've had a chance to review it is have you ever seen this document before.

A. Yes, I have this.

Q. Could you explain to me what this is?

A. As explained on the front page, an e-mail from Mr. Evans. It represents an update of our present bonus and related spend in respect of the commitments we have made to former Lehman employees as part of the acquisition.

Q. All right. So I see several iterations of this. Is this a periodically prepared analysis?

A. Yes. This was a set of

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analysis -- or this was an analysis prepared daily for the purposes of the Executive Committee of Barclays Capital for a certain period following the acquisition.

Q. Is it still prepared daily?

A. No.

Q. So this is -- immediately following the acquisition this is a daily summary?

A. That's correct.

Q. And how long did those summaries go? Do you know?

A. I don't --

MR. GREEN: Object to the form.

A. I don't recall when we ceased producing them. I can't recall.

Q. Who prepared these?

A. I prepared the original one personally drawing on work done by several HR colleagues. Thereafter individuals in my team prepared the document and distributed it to Mr. Evans for distribution.

Q. Okay. So do you have any way of knowing whether you prepared this particular

1  
2 UNITED STATES BANKRUPTCY COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x  
In Re: Chapter 11  
5 LEHMAN BROTHERS Case No. 08-13555 (JMP)  
HOLDINGS, INC., et al., (Jointly Administered)  
6 -----)

7  
8 \* \* \* HIGHLY CONFIDENTIAL \* \* \*  
9 VIDEOTAPED DEPOSITION OF ALVIN H. BROWN  
10 New York, New York  
11 Friday, January 8, 2010  
12  
13  
14  
15  
16  
17  
18  
19

20 Reported by:  
FRANCIS X. FREDERICK, CSR, RPR, RMR  
21 JOB NO. 27031  
22  
23  
24  
25



A. BROWN - HIGHLY CONFIDENTIAL  
Creditors Committee.

MS. LEE: Shinzong Lee from  
Simpson Thacher.

MR. ROTHMAN: Seth Rothman from  
Hughes Hubbard on behalf of the SIPA  
Trustee.

MR. THOMAS: And let me just note  
that this is part two of a 30(b)(6)  
deposition of Simpson Thacher as opposed  
to an individual deposition of the  
witnesses.

\* \* \*

ALVIN BROWN, called as a witness,  
having been duly sworn by a Notary  
Public, was examined and testified as  
follows:

EXAMINATION BY

MR. THOMAS:

**Q. Mr. Brown, good afternoon.**

A. Good afternoon.

**Q. Would you please state your full  
name?**

A. Alvin Howard Brown.

**Q. And have you been deposed before?**

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A. BROWN - HIGHLY CONFIDENTIAL

A. I have.

**Q. So you understand how this process  
works. If at any point you're not sure what  
question I'm asking, please ask me to  
rephrase. I'll be happy to try.**

A. Yes.

**Q. Do you understand you've been  
designated by Simpson to be the 30(b)(6)  
witness on a couple of topics here today?**

A. Yes.

**Q. And those topics include generally  
the compensation and cure liabilities assumed  
by Barclays and the employment offered to  
Lehman executives by Barclays.**

A. I just didn't understand -- after  
"compensation" what was the next word that  
you --

**Q. Cure payments, liabilities.**

A. Okay.

**Q. We'll work through it and see how  
we do.**

A. Fine.

**Q. How long have you been with  
Simpson?**

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A. BROWN - HIGHLY CONFIDENTIAL

A. Since May of 1983. So about 26  
years.

**Q. And what is your area of practice?**

A. I'm the head of the Executive  
Compensation and Employee Benefits Group at  
the firm.

**Q. And when was the first time you  
became involved in the Lehman/Barclays  
transaction?**

A. September of 2008. It was after  
Labor Day. I don't -- I don't remember the  
exact date.

**Q. And had you worked previously for  
or with Lehman Brothers?**

A. During the course of my time at  
Simpson?

**Q. Yes.**

A. Yes.

**Q. Had they been a regular client of  
the firm for many years?**

A. Yes.

**Q. And can you describe what work you  
have done for Simpson over the years? You  
personally?**

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A. BROWN - HIGHLY CONFIDENTIAL

A. For Simpson?

**Q. Or excuse me. For Lehman. What  
work have you done for -- on behalf of Lehman  
while at Simpson?**

MR. AMER: Do you mean in very  
general terms?

MR. THOMAS: Yes.

A. Actually, my involvement was in my  
early years at Simpson generally and I  
addressed some questions related to ERISA or  
compensation. But hadn't worked with them for  
years until this.

**Q. And when this came up, the  
transaction with Barclays, why were you  
brought into the matter?**

A. Because my partner in the group  
had a personal issue conflict that he couldn't  
be available for the weekend that was going to  
be relevant and I was asked to step in.

**Q. Do you recall the week that Lehman  
Brothers Holding filed bankruptcy being  
roughly September 15th? Is that consistent  
with your recollection?**

A. Yeah. That's consistent.

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1 A. BROWN - HIGHLY CONFIDENTIAL  
2 Q. And do you recall whether you were  
3 over -- physically went over to Lehman  
4 Brothers' building on that Monday after the  
5 filing?

6 A. Yes.

7 Q. And you spent a good part of the  
8 day there?

9 A. Yes.

10 Q. And what were you doing there?

11 A. Negotiating the benefit provisions  
12 of an acquisition agreement.

13 Q. And can you elaborate a little  
14 more on the benefit provisions, what precisely  
15 you mean?

16 A. There were provisions in the  
17 agreement that related to the treatment or  
18 handling of the employees of the Lehman  
19 entities. And I was addressing those issues  
20 along with two partners from Weil Gotshal.

21 Q. And who were they?

22 A. Andy Gaines and Amy Rubin.

23 Q. And did you continue to work on  
24 those issues through the week or just for a  
25 couple of days, or do you recall?

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1 A. BROWN - HIGHLY CONFIDENTIAL

2 A. My recollection, yes, but  
3 intermittently.

4 Q. So through the time of closing?

5 A. Really, after the agreement was  
6 signed my involvement was pretty attenuated.

7 Q. And by agreement, are you  
8 referring to the original executed APA?

9 A. Correct.

10 Q. Let me go ahead and show you this.  
11 I might refer to it later. It was previously  
12 marked as Exhibit 1. Take a moment and review  
13 and just confirm whether that's the agreement  
14 that you were involved in negotiating and  
15 drafting.

16 A. I mean the title of it is the same  
17 title as the agreement. You know, without --  
18 I'm assuming that if it is, it is the one that  
19 I worked on.

20 Q. If you would --

21 A. It's certainly the same title.

22 Q. Sure. And if you'd flip to  
23 Section 9.

24 A. (Witness complies.)

25 Q. Are those sections or issues some

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1 A. BROWN - HIGHLY CONFIDENTIAL  
2 of the sections and issues that you worked on?

3 A. Yes.

4 Q. Let's put that aside for a second.  
5 And let me show you a document -- we'll refer  
6 back to that in a minute. But let me show you  
7 a document marked Exhibit 489 which is the  
8 LBHI board minutes.

9 (Document review.)

10 Q. Let me start by asking if you  
11 recognize the document itself.

12 A. Only because it's identified. But  
13 I'm not sure.

14 Q. Have you had occasion to read this  
15 document before?

16 A. I have read it in connection with  
17 preparing for this deposition.

18 Q. Okay.

19 A. I'm not sure I saw it before that.  
20 But I...

21 Q. Do you recall attending this board  
22 meeting described here?

23 A. Yes.

24 Q. And you're listed as a present on  
25 the first page.

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1 A. BROWN - HIGHLY CONFIDENTIAL

2 Do you see that?

3 A. Yes.

4 Q. If you would turn, please to page  
5 number 3 of this document.

6 A. (Witness complies.)

7 Q. The second paragraph reads, "Mr.  
8 Roberts -- " do you understand that to be a  
9 Weil Gotshal lawyer?

10 A. I don't remember who he was with.

11 Q. Okay.

12 It reads, "Mr. Roberts resumed by  
13 describing that it is a condition to the  
14 transaction that eight specific firm employees  
15 enter into employment agreements with  
16 Barclays. He stated that Mr. McGee was one of  
17 those employees, so interested firm employees  
18 were involved in the transaction negotiations  
19 on behalf of the team."

20 Do you see that?

21 A. Yes.

22 Q. And so Simpson was aware at the  
23 time the deal was being negotiated that  
24 members of Lehman negotiating the deal were at  
25 the same time negotiating employment

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1 A. BROWN - HIGHLY CONFIDENTIAL  
2 agreements with Barclays, correct?

3 MR. HINE: Object to the form.

4 A. Well, I'm not sure -- from your  
5 question I'm just not -- you said Simpson was  
6 aware?

7 Q. Yes. Simpson Thacher.

8 A. I was aware.

9 Q. Good enough.

10 A. Okay.

11 Q. And you're the firm designee on  
12 this issue.

13 A. Okay.

14 Q. Do you recall that being raised in  
15 the -- in a board minute, a discussion of the  
16 fact that certain employees, Lehman employees  
17 who were negotiating a transaction were at the  
18 same time negotiating for future employment  
19 and bonus agreements with Barclays?

20 MR. HINE: Object to the form.

21 A. No. No. Not --

22 Q. You don't recall that?

23 A. I don't recall that being a point  
24 of discussion in the form you just asked me.

25 Q. Okay. Do you recall that it was

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1 A. BROWN - HIGHLY CONFIDENTIAL

2 described to the board that interested firm  
3 employees were involved in transaction  
4 negotiations on behalf of LBHI?

5 A. Yes.

6 Q. And at the last paragraph on this  
7 page do you see where it says "Mr. Brown of  
8 Simpson Thacher & Bartlett reported on the  
9 employee benefits aspect of the proposed sale  
10 agreement. He..." being yourself "...reported  
11 that the firm proposed post-closing covenants  
12 to protect employee benefits but that the only  
13 commitment Barclays would make is to keep  
14 severance levels in place for the balance of  
15 the calendar year."

16 Do you see that?

17 A. Yes.

18 Q. The reference to employee benefits  
19 and the keeping of severance levels in place  
20 for the balance of the calendar year, is that  
21 issue described in Section 9 of the original  
22 APA, Exhibit 1?

23 A. Yes.

24 Q. It goes on. Further down in the  
25 paragraph, it says, "Mr. Brown described the

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1 A. BROWN - HIGHLY CONFIDENTIAL  
2 draft employment letters for eight specific  
3 former employees which are a condition to the  
4 deal. He described that draft employment  
5 letters provide for at-will employment for a  
6 period of time with salary and guaranteed cash  
7 bonus and a retention award."

8 Is that an accurate summation of  
9 your description to the board?

10 A. Based on my recollection, yes.

11 Q. And did you actually review the  
12 employment agreements of those individuals?

13 A. No.

14 Q. How did you know about the terms  
15 of the agreements?

16 A. I saw a draft of the form of  
17 letter. But not the actual completed letters  
18 for the individuals.

19 Q. And the form of the letter made  
20 clear that salary and guaranteed cash bonus  
21 and retention award were being provided?

22 A. You know, at this point I don't  
23 recall. But...

24 Q. You have no reason to believe this  
25 description's inaccurate.

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1 A. BROWN - HIGHLY CONFIDENTIAL

2 A. I do not.

3 Q. So in any event you and presumably  
4 others at Simpson were aware of the fact that  
5 people -- at least some of the people  
6 negotiating the deal on behalf of LBHI were at  
7 the same time being offered employment with  
8 Barclays including salary, guaranteed cash  
9 bonus and retention awards?

10 MR. HINE: Object to the form.

11 MR. AMER: Objection to the form  
12 of the question. You can answer.

13 A. Yes.

14 Q. If you would turn to page 4,  
15 please.

16 A. (Witness complies.)

17 Q. The last paragraph reads, "The  
18 directors asked questions about the sale and  
19 license-back of the Lehman Brothers name and  
20 the ability to solicit firm employees if the  
21 deal does not go forward, and the fact that  
22 Barclays will have already signed up  
23 approximately 200 of the firm's employees."

24 Do you recall that the -- Barclays  
25 was concerned about being able to retain the

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A. BROWN - HIGHLY CONFIDENTIAL

firm's employees which they were going to be buying?

A. Yes.

Q. And did that make sense to you in this environment that Barclays was concerned that they were essentially buying the business, that they be able to retain the Lehman employees that made up the business?

MR. HINE: Object to the form.

A. Yes.

Q. Let me show you a document that we'll mark as Exhibit 531.

(Deposition Exhibit 531, document bearing production number STB 09661, marked for identification as of this date.)

BY MR. THOMAS:

Q. And let me know when you've had a chance to review it.

(Document review.)

A. Okay.

Q. Do you recognize this as an e-mail from yourself to a couple people at Lehman and other Simpson attorneys dated September 17th,

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2008?

A. Yes.

Q. And in here you write in part in the second paragraph, "I wanted to be sure that you knew that I would be happy to speak to you or any of the Big 8 or other senior executives as they worked through the employment letters or other arrangements with Barclays."

Do you see that?

A. I do.

Q. Do you recall if you ever ended up doing further work in terms of the substance of the employment letters?

A. I -- yes.

Q. And did you?

A. No.

Q. Turning back to the original APA and that Section 9. Section 9.1. Is it fair to say that Section 9.1 addresses two types of employment -- employee benefits; one involving severance payments and one involving bonus payments?

A. Could you repeat the question?

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A. BROWN - HIGHLY CONFIDENTIAL

Q. Sure. Within Section 9.1 which is Employment Benefits there's both an assumed liability by the purchaser in terms of severance and bonus payments, correct?

MR. HINE: Object to the form.

MR. AMER: You can answer.

A. Yes.

Q. Do you know if there was ever any effort to calculate that liability?

A. I don't recall.

Q. Do you have any recollection of a \$2 billion number?

A. Yes.

Q. Is it your recollection that \$2 billion number was someone's estimate of potential liability under Section 9.1?

MR. HINE: Object to the form.

A. Yes. But not with respect to the section that you just were referencing. The \$2 billion number really related to subsection

C.  
Q. Do you recall ever seeing it on a -- where do you recall seeing the \$2 billion number?

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A. BROWN - HIGHLY CONFIDENTIAL

A. It was on a schedule.

Q. And did the schedule have a separate line item for severance?

A. I don't recall.

Q. And do you know who calculated the \$2 billion figure?

A. I do not.

Q. Were you involved in that process in any way?

A. In calculating the number?

Q. Yes.

A. No.

Q. Do you have any understanding what it entailed specifically?

A. Yes.

Q. And -- let me go ahead and show you a document we'll mark as 532.

(Deposition Exhibit 532, document bearing production number LBHI 013444 with attached spreadsheet, marked for identification as of this date.)

A. Okay.

Q. Have you ever seen this document before?

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1 A. BROWN - HIGHLY CONFIDENTIAL

2 A. No.

3 Q. Let me ask you to take a moment to  
4 review the attachment to the e-mail.

5 A. The attachment to --

6 Q. The cover is an e-mail --

7 A. Oh, I see. Okay. Sorry.

8 Q. The cover is an e-mail from Kelly  
9 Martin to Richard Krasnow, an attorney at Weil  
10 Gotshal, dated September 18th, 2008.

11 A. Right.

12 Q. The spreadsheet attachment, do you  
13 recall whether as part of your work with  
14 respect to the Barclays sales transaction, you  
15 ever reviewed sheets like this?

16 A. Yes.

17 Q. And did you?

18 A. Yes. But not this one.

19 Q. How do you -- how are you certain  
20 a year later that it's not this one?

21 A. I've just never seen it before.

22 Q. Did you see a lot of spreadsheets?

23 A. No. Well, in this transaction?  
24 No.

25 Q. Have you seen more than one?

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1 A. BROWN - HIGHLY CONFIDENTIAL

2 A. Not that I recall.

3 Q. When you say spreadsheet, are you  
4 referring to just a one-page schedule?

5 A. Correct.

6 Q. You never saw any of the backup as  
7 to how that schedule was built up?

8 A. (Witness shakes head.)

9 MR. AMER: You have to answer.

10 THE WITNESS: Oh.

11 A. No.

12 Q. If you would look at the last page  
13 of this document under the Liabilities column,  
14 do you see the fourth section there, Payables?

15 A. Yes.

16 Q. And do you see Compensation  
17 Payable?

18 A. Yes.

19 Q. And do you see that there was a  
20 transaction adjustment to that payable?

21 A. Yes.

22 Q. Were you aware at the time that  
23 there was a transaction adjustment to the  
24 estimate for compensation payables?

25 A. Not that I recall.

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1 A. BROWN - HIGHLY CONFIDENTIAL

2 Q. You don't recall having  
3 discussions with Weil Gotshal lawyers about  
4 that issue?

5 A. No.

6 Q. Do you have an understanding of  
7 why there would be a transaction adjustment?

8 MR. GATTO: Object to the form of  
9 the question.

10 Q. To the compensation payable.

11 MR. AMER: Same objection. Since  
12 he doesn't recall there being an  
13 adjustment.

14 A. No. I mean...

15 Q. Do you have any knowledge as to  
16 whether this line item, Compensation Payable,  
17 includes severance?

18 A. No.

19 Q. Do you know whether Lehman pays a  
20 larger or smaller percentage of its yearly  
21 bonuses as cash than Barclays does?

22 MR. AMER: Object to the form of  
23 the question.

24 A. I don't recall.

25 Q. Do you know whether the \$2 billion

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1 A. BROWN - HIGHLY CONFIDENTIAL

2 figure you're referring to was adjusted in  
3 order to allow for the fact that Barclays pays  
4 a higher percentage of cash compensation?

5 MR. HINE: Object to the form.

6 A. No.

7 Q. Do you understand whether there  
8 was any adjustment to the figure in order to  
9 cover the entire Lehman fiscal year for the  
10 compensation amounts due?

11 MR. HINE: Object to the form.

12 A. No.

13 Q. Do you have any understanding of  
14 where that \$2 billion figure came from or how  
15 it was calculated?

16 A. Yes.

17 Q. Can you tell me.

18 A. My understanding was that that was  
19 the number for the accrued bonuses for the  
20 Lehman employees for that year. It had been  
21 agreed to and was put on the schedule.

22 Q. And where did that understanding  
23 come from?

24 A. I don't -- it was from one of the  
25 participants or part of the team that was

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1 A. BROWN - HIGHLY CONFIDENTIAL  
2 involved in negotiating but I don't recall  
3 specifically who it was.

4 Q. Do you recall which party it was  
5 from?

6 A. No.

7 Q. Is this something that you  
8 actually recall from a year and a half ago or  
9 is it something that you've learned in  
10 preparation for this deposition?

11 MR. HINE: Well, hold on. Before  
12 you answer that --

13 MR. THOMAS: That's a timing  
14 question. That can't be privileged.

15 MR. HINE: I'm cautioning him not  
16 to reveal privileged information he  
17 might have learned after September 30th.  
18 We have a waiver here. So if your  
19 answer entails something that you  
20 learned after September 30th you're not  
21 allowed to waive the privilege.

22 A. I'm not -- could you repeat the  
23 question because I'm not sure --

24 Q. Your understanding about this \$2  
25 billion figure, is this an actual recollection

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1 A. BROWN - HIGHLY CONFIDENTIAL  
2 of yours from a year and a half ago or is it  
3 something you've come to understand more  
4 recently in connection with this deposition?

5 MR. HINE: Same warning.

6 A. When you say my understanding of  
7 this, I mean, what I told you was my  
8 understanding and I really hadn't had  
9 discussions that changed that since then.

10 Q. So this is based on your  
11 recollection from a year ago.

12 A. My recollection.

13 Q. Now, what did you do to prepare  
14 for today's deposition?

15 A. I met with my counsel.

16 Q. Anything else?

17 A. Actually, no.

18 Q. If -- so turning back to the --  
19 Section 9.1 of the original APA did you draft  
20 this language in any part of the 9.1?

21 A. Yes.

22 Q. Which portions did you draft?

23 A. That I can't recall.

24 Q. Were you the original drafter?

25 A. No.

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1 A. BROWN - HIGHLY CONFIDENTIAL

2 Q. Do you know who was?

3 A. Somebody at Cleary. I dealt with  
4 Arthur Cohen who's a partner at Cleary but I  
5 don't -- the draft came originally to me and  
6 my understanding was it had been drafted by  
7 Cleary and then I marked it up.

8 Q. Do you recall any changes you made  
9 to (b) or (c)? Section (b) or (c) of 9.1.

10 A. I don't recall the specifics.

11 Q. Okay. Is it your under -- let's  
12 say that after Barclays -- the Barclay  
13 transaction was consummated 90 percent of the  
14 employees were severed. Barclays would have  
15 to pay severance for those employees, correct,  
16 pursuant to 9.1(b)?

17 MR. AMER: Objection to the form  
18 of the question.

19 Q. 9(c). Strike that.

20 If Barclays -- under 9.1 Barclays  
21 would have to pay severance payments to  
22 employees severed prior to the end of the  
23 year; is that correct?

24 A. Correct.

25 Q. And if there were a lot of

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1 A. BROWN - HIGHLY CONFIDENTIAL  
2 severances -- strike that.

3 And you know if that would involve  
4 paying those employees all of their accrued  
5 2008 bonus money.

6 A. Yes.

7 Q. So there's potentially a lot of  
8 assumed liability by taking on that severance  
9 obligation; is that correct?

10 MR. HINE: Objection.

11 A. Correct. Yes.

12 Q. Is it your belief that if Barclays  
13 had terminated 90 percent of the employees,  
14 that the remaining 10 percent of the employees  
15 would have to get paid \$2 billion?

16 MR. ROTHMAN: Objection to the  
17 form.

18 MR. HINE: Same objection.

19 MR. AMER: You can answer.

20 A. No. That's not my understanding.  
21 Or my belief.

22 Q. In that event if that -- in that  
23 scenario, would some of the \$2 billion be sent  
24 to pay bonuses to the retained employees and  
25 severance to the severed employees?

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A. BROWN - HIGHLY CONFIDENTIAL

MR. HINE: Object to the form.

A. Well -- no. I mean, I --

MR. AMER: If you don't understand the question tell him.

A. Yeah. Can you repeat the question?

**Q. Sure. There's \$2 billion we've referred to.**

A. Right.

**Q. And I think you've said that if 90 percent of the employees are severed you wouldn't have to pay the whole \$2 billion to the remaining 10 percent for bonuses. My question is wouldn't some of the \$2 billion under your -- under the section here be going to pay the accrued bonuses of those severed?**

A. Yes.

MR. HINE: Object to the form.

A. As well as severance.

**Q. Okay. So the \$2 billion includes both bonus and severance?**

MR. HINE: Object to form.

MR. KAY: Objection.

A. No.

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A. BROWN - HIGHLY CONFIDENTIAL

**Q. Can you explain?**

A. Yes. The bonus -- in order to prevent people from being terminated and deprived of their bonus, the arrangement was that if they were terminated they would receive their accrued bonus and they would be paid severance under the severance arrangements so that the \$2 billion -- if 90 percent of the people were terminated and they represented 90 percent of the bonus pool, they would be paid the 90 percent of the bonus pool and to the extent they were covered under severance arrangements they would also be paid the severance arrangements that they were entitled to. If they were severed before 12/31/2008.

**Q. But those that were severed, although they would be getting paid in effect their accrued bonus for 2008, that payment would actually be in the form of a severance payment, correct?**

MR. HINE: Object to the form.

A. I mean, you know, to me it's a bonus payment that's being paid because

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A. BROWN - HIGHLY CONFIDENTIAL

somebody's being severed. To you that may be a severance payment. I distinguish the severance payment that somebody gets purely on account of being severed from things that get accelerated by virtue of a termination.

So, for instance, if somebody was entitled to a retirement payment under a non-qualified retirement arrangement and the got severed and that accelerated the payment, I wouldn't call that a severance payment. I would call that an accelerated retirement payment that's triggered by severance.

So I would say they would get severance and they would get a bonus. The \$2 billion or their portion of the \$2 billion would be the bonus and the severance would be whatever the severance was.

**Q. Well, however it's characterized, if there was a 90 percent -- or 90 percent of the compensation, of the \$2 billion 90 percent would go to the 90 percent terminated and the 10 percent would go to the 10 percent retained, correct?**

A. Correct.

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A. BROWN - HIGHLY CONFIDENTIAL

**Q. Turning back to Exhibit 532 which is the e-mail attaching the two-page spreadsheet.**

A. Okay.

**Q. What do you understand the term transaction adjustment to refer to?**

MR. HINE: Object to the form.

A. Generally?

**Q. Yes.**

A. It's some kind of either purchase price or other calculation change.

**Q. And are you -- do you know how the estimates for potential exposure on cure liabilities was calculated?**

A. No.

**Q. Do you have any knowledge of what those amounts were?**

A. No.

Yeah, go ahead.

**Q. I mean --**

A. I'm not sure I know what a cure liability is so --

**Q. Okay. Or -- well, let's take a look at Section 2.5 of the APA. Would you**

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1  
2 UNITED STATES BANKRUPTCY COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
4

5 In re: )  
6 ) Chapter 11  
7 LEHMAN BROTHERS ) Case No. 08-13555(JMP)  
8 ) (Jointly Administered)  
9 HOLDINGS, INC., et al., )  
10 )  
11 Debtors. )  
12 -----)  
13

14 HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF  
15 ROBERT MESSINEO  
16 New York, New York  
17 Thursday, April 1, 2010  
18  
19  
20  
21

22 Reported by:  
23 KRISTIN KOCH, RPR, RMR, CRR, CLR  
24 JOB NO. 29427  
25

1  
2 IT IS HEREBY STIPULATED AND AGREED  
3 by and between the attorneys for the  
4 respective parties herein, that filing and  
5 sealing be and the same are hereby waived.

6 IT IS FURTHER STIPULATED AND AGREED  
7 that all objections, except as to the form  
8 of the question, shall be reserved to the  
9 time of the trial.

10 IT IS FURTHER STIPULATED AND AGREED  
11 that the within deposition may be sworn to  
12 and signed before any officer authorized  
13 to administer an oath, with the same  
14 force and effect as if signed and sworn  
15 to before the Court.

16  
17 - oOo -  
18  
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21  
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25

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1  
2 (Deposition Exhibit 682, Declaration  
3 of Robert L. Messineo, marked for  
4 identification.)  
5 \* \* \*

6 THE VIDEOGRAPHER: This is the start  
7 of tape number 1 of the videotaped  
8 deposition of Robert Messineo in the matter  
9 in re Lehman.

10 Today's date is April 1st, 2010 at  
11 approximately 2:10 p.m.

12 Will the court reporter please swear  
13 in the witness.

14 ROBERT MESSINEO,  
15 called as a witness, having been duly sworn  
16 by a Notary Public, was examined and  
17 testified as follows:

18 EXAMINATION BY  
19 MS. NEUHARDT:

20 Q. Good afternoon, Mr. Messineo. My  
21 name is Amy Neuhardt. I am with Boies,  
22 Schiller & Flexner and I am representing  
23 Barclays in this matter.

24 A. Good afternoon.

25 Q. Could you tell me where you are

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1 Messineo - Highly Confidential  
2 employed?

3 A. The law firm of Weil, Gotshal &  
4 Manges.

5 Q. And you are a partner there?

6 A. Yes, I am.

7 Q. And is that the same place you were  
8 employed in September of 2008?

9 A. Yes.

10 Q. Okay. And you were a partner at  
11 that time as well?

12 A. That's correct.

13 Q. Have you ever been deposed before?

14 A. Yes, I have.

15 Q. Okay. So you know then that if you  
16 don't understand one of my questions, you can  
17 ask me to clarify, or if you need a break, you  
18 can let me know.

19 A. I understand.

20 Q. Okay. In connection with your work  
21 as a Weil partner in September of 2008, were  
22 you involved in a transaction between Barclays  
23 and Lehman Brothers?

24 A. Yes, I was.

25 Q. Okay. And what was your role in

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2 that transaction?

3 A. I was involved in the negotiation  
4 and the preparation of the documents that  
5 were the Asset Purchase Agreement with regard  
6 to the sale of the Lehman capital markets and  
7 investment banking business.

8 Q. Okay. Which party were you  
9 representing?

10 A. I was representing Lehman.

11 Q. Okay. I am going to hand you or the  
12 court reporter will hand you what's been marked  
13 as Deposition Exhibit 682. After you have had  
14 a chance to look at it my question will be do  
15 you recognize it?

16 A. Yes, I do.

17 Q. And on the last -- what is this  
18 document?

19 A. This is my declaration from a few  
20 months ago.

21 Q. Okay. And on the last page is that  
22 your signature?

23 A. Yes, it is.

24 Q. Okay. You can take a moment to look  
25 it over if you would like, but my question --

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my first question will be is there anything in this declaration that you now consider inaccurate?

A. No.

Q. Okay. All right. Paragraph 3 of your declaration refers to an Exhibit A. It's a Clarification Letter. I can tell you that the version of this that was served to us did not have an Exhibit A, so I am going to give you what was previously marked as Deposition Exhibit 25 (handing) and ask you whether or not this document is the same as what you had intended to attach to your declaration.

A. This appears to be the final Clarification Letter, yes.

Q. Okay. So let's look at paragraph 2 of your declaration. The third sentence begins: "I was one of the Weil attorneys responsible for drafting the letter agreement dated September 20, 2008, which was executed on September 22, 2008 by Barclays, LBHI, James W. Giddens as the trustee for the SIPA liquidation of LBI, and LB 745 LLC (the Clarification Letter)." Is that correct?

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A. That's correct.

Q. Okay. Did you have responsibilities in connection with the Clarification Letter other than participating in the drafting?

A. I don't -- I am not sure I understand what you are asking.

Q. Sure. Were you one of the Weil attorneys who would have been directly interacting in negotiations with representatives of Barclays?

A. Yes.

Q. Okay. So you would have been speaking to people from Barclays or Barclays' attorneys in connection with the Clarification Letter?

A. Correct.

Q. When I refer to representative of Barclays throughout the deposition, actually I will be intending to mean Barclays as well as its agents, which would be Cleary Gottlieb, Michael Klein, who is an independent financial advisor. So will you understand that to be the meaning as I refer to representatives of Barclays?

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A. Yes.

Q. Okay, great.

Now, paragraph 4 of your declaration, page 2, reads: "I understood at all times while the Clarification Letter was being drafted that both securities and cash were being held in accounts maintained by LBI for the purpose of complying with Rule 15c3-3 for the benefit of and in order to protect the interests of customers of LBI. The accounts so holding securities or cash pursuant to Rule 15c3-3 are herein after referred to as the customer reserve accounts."

Is that an accurate statement?

A. Yes, it is.

Q. Okay. Do you consider yourself an expert in SEC Rule 15c3-3?

A. No.

Q. Okay. Had you had any prior dealings with that rule prior to the Lehman/Barclays transaction?

A. Only a very small degree.

Q. Okay. And do you consider yourself to be an expert in the Securities Investment

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Protection Act known as SIPA?

A. I do not.

Q. Okay. And had you had any prior matters that involved interpretation of SIPA prior to the Lehman/Barclays matter?

A. Again, only in a small degree.

MS. NEUHARDT: I am going to hand you what will be marked as Deposition Exhibit 683.

(Deposition Exhibit 683, Declaration of Victor I. Lewkow, marked for identification.)

Q. Have you ever seen this document before?

A. Yes.

Q. In what context have you seen it before?

A. I saw it recently in connection with preparation for this deposition.

Q. Okay. Did you review any other documents in connection with this deposition?

A. I also looked at one of the memoranda that had been submitted.

Q. Oh, that was publicly filed in

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<p>1 Messineo - Highly Confidential 2 this -- 3 A. Yes. 4 Q. Okay. Okay. Do you know 5 Mr. Lewkow? 6 A. Yes, I do. 7 Q. Okay. Who is he? 8 A. He is a partner at Cleary Gottlieb 9 and he was the lead partner in the negotiation 10 of the acquisition of the Barclays agreement. 11 Q. Okay. Do you have any reason to 12 doubt Mr. Lewkow's honesty or integrity? 13 A. No. 14 Q. Okay. Would you take a moment and 15 read paragraphs 18 to 20 of his declaration. 16 (Document review.) 17 A. 18 and 20, yes. 18 Q. 18 through 20. Sorry. 19 (Document review.) 20 A. Okay. 21 Q. So those paragraphs recount 22 Mr. Lewkow's recollection of a conversation 23 that occurred in the hallway of Weil Gotshal on 24 either the late night of September 21st, 2008 25 or early morning of September 22nd, 2008; TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Messineo - Highly Confidential 2 correct? 3 A. That's what they describe. 4 Q. Okay. Do you recall participating 5 in a conversation in the hallway such as 6 described by Mr. Lewkow? 7 A. I don't recollect this specific 8 conversation that he is describing. 9 Q. Okay. Do you have any reason to 10 believe that that conversation did not occur as 11 described by Mr. Lewkow? 12 MR. WOOD: Objection to form. 13 A. Well, I can only say that in 14 conversations that I had with people and in the 15 course of the drafting that I was involved 16 with, there was never any question raised to 17 this effect that if securities could not come 18 out of the custodial accounts, that they would 19 be made available otherwise by Lehman. 20 Q. But do you have any reason to doubt 21 that Mr. Lewkow is telling the truth about his 22 version of that hallway conversation in his 23 declaration? 24 MR. WOOD: Objection to the form. 25 A. It's not something that I can TSG Reporting - Worldwide 877-702-9580</p>
Page 16	Page 17
<p>1 Messineo - Highly Confidential 2 correspond with. 3 Q. So you have no personal knowledge of 4 it one way or the other? 5 A. I did not have this conversation 6 with Mr. Lewkow. 7 Q. Okay. All right. Let's look back 8 at your declaration, paragraph 8. 9 Paragraph 8: "I understood the 10 phrase "or securities of substantially the same 11 nature and value" was included at the end of 12 the second sentence of paragraph 8 of the 13 Clarification Letter to take account of the 14 potential for there to be a change in the 15 specific securities held in the customer 16 reserve accounts between September 22nd and the 17 date when it became permissible to withdraw 18 securities from the customer reserve accounts." 19 Is that correct? 20 A. Correct. 21 Q. Okay. Did you personally draft that 22 clause, "or securities of substantially the 23 same nature and value"? 24 A. I can't recollect whether I 25 specifically drafted it. It's possible that I TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Messineo - Highly Confidential 2 did. 3 Q. Okay. 4 A. I think the clause was originally 5 somewhat different, but I just can't say for 6 sure whether I drafted it. I might have. 7 Q. Okay. Did you get your 8 understanding of the meaning of that phrase as 9 set forth in paragraph 8 of your declaration 10 from any representative of Barclays? 11 A. I can't recollect specific 12 conversation with specific persons, but my 13 understanding of that phrase grew out of my 14 participation in the discussions and in the 15 negotiations that were going on that night. 16 Q. So you can't recall discussing this 17 with anybody from Barclays? 18 A. I don't have specific recollection 19 of discussing this phrase. 20 Q. Okay. After you drafted the phrase 21 did you communicate your understanding of that 22 phrase to any representative of Barclays? 23 A. I don't recollect a specific 24 conversation. 25 Q. Do you recollect generally having TSG Reporting - Worldwide 877-702-9580</p>

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**had a conversation to that effect?**

A. I recollect generally this phrase coming into the agreement and this being in the context of the fact that there were securities in this account and that the way the phrase -- the way the related phrase had been drafted is it referred to the specific securities on that date and so it was necessary to have this phrase in order to properly present the thing.

THE COURT REPORTER: I'm sorry?

A. Properly present the matter.

**Q. Can you look at the Clarification Letter, Exhibit 25, and show me where you are referring to securities as of a specific date?**

A. Did you say it was paragraph 25?

**Q. Sorry, it's Deposition Exhibit 25. It is paragraph 8, which is on page 4.**

A. Okay. Yes, because it says securities -- 769 million of securities is held by or on behalf of LBI on the date hereof pursuant to Rule 15c3-3.

**Q. Okay. And was it your understanding that there was only 769 million of securities in that account?**

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**A. That was the current amount or value that we were told was in the account.**

**Q. Who told you that?**

A. Again, I can't recollect who specifically. The information would have come from someone at Lehman.

**Q. And it was your understanding that that was the total amount of securities in the account or the total amount that was in excess in the account or that was believed to be in excess in the account?**

MR. WOOD: Objection to form.

A. I'm sorry, was in excess of what?

**Q. Let me back up. What did you understand the 769 million to represent?**

A. To be securities, I believe mostly government securities or primarily government securities, that were held in this account, or may have been more than one actual account, for customer protection purposes.

**Q. Did you understand there to be an excess in that account that could be transferred?**

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A. I understood there to be cash as well as securities in the account, and so the total value of the account -- and, again, this may have been more than one account. The total value of them I understood to be substantially more than 769 million, but the portion of it that was represented by securities I understood to be 769 million, or at least that's what had been reported by the Lazard people for purposes of negotiation of this issue which had come up that evening.

**Q. And you did not understand that to only be 769 million in the excess as opposed to the entirety of the account?**

A. No, I don't -- I'm not sure what you mean, excess of what.

**Q. Excess of the amount required by SEC Rule 15c3-3.**

A. Oh, oh, oh. Okay. I see what you are saying. I'm not sure that people knew at this point how much in this account was what was required to be in the account. My understanding is that this is something that requires approval of the SEC and the

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calculations are fairly complicated and there might be excess funds as of that date or there might not be excess funds as of that date and as of some future date it would be different depending on what happened with customers and customer positions, and so there might be funds that were excess, but whether all or part of these were excess on that day I don't know.

**Q. Okay. Well, do you understand now, though, what I am asking whether or not it was believed that the 769 was in the excess or if it was 769 in the entirety of the account?**

A. I believe the general understanding is that this was the entire account, the cash and the securities, and that some part of it would ultimately turn out to be excess or might ultimately turn out to be excess.

**Q. Okay. All right.**

**Let's go back to -- we were talking about paragraph 8 of your declaration and your understanding of the meaning of the clause "or securities of substantially the same nature and value," and I believe you had testified that you did not have a specific recollection of**

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**communicating your understanding of that phrase to any representative of Barclays; is that correct?**

A. Correct.

**Q. And then I asked if you had any general recollection and I do not believe your answer was quite answering the question.**

**So I will ask you again, do you recall generally meeting -- representing your understanding of that phrase to anybody who was a representative of Barclays?**

MR. WOOD: Objection to form.

MR. HINE: Objection to form.

MR. POLKES: You can answer.

A. I don't recollect a specific conversation regarding this phrase with anyone at Barclays.

**Q. Okay. Who is Harvey Miller?**

A. Harvey Miller is a senior partner here.

**Q. Okay. And did you communicate your understanding of that phrase to Mr. Miller?**

A. At the time that this was written or ever?

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**Q. Well, prior to the closing of the transaction.**

A. I don't know that I had a specific conversation with Mr. Miller about this phrase.

**Q. To your knowledge, was a provision regarding maturing securities required in any way by a statute or regulation?**

A. Was a provision regarding maturing securities required?

**Q. That's how I am characterizing what you described the meaning of the phrase to be, but was -- is there any statute or regulation that requires provision to be made for maturing securities such as in this situation?**

A. I don't know of a regulation that requires a provision to be made. My understanding is that the securities in the account would mature and would need to be reinvested.

**Q. Okay. Was there any list by CUSIP or otherwise of the 769 million that were to be transferred over to Barclays?**

A. There was not one that I was aware existed at that time.

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**Q. So do I understand your testimony to believe that -- to be that you believed that the provision was necessary because there may have only been \$769 million in securities in that customer reserve account on the date of the agreement?**

MR. WOOD: Objection to the form.

A. I wouldn't say it that way.

There -- what was described was that Barclays was to get 769 million of particular securities that existed in particular accounts on a particular day and then it went on, as it needed to in order to make sense, to say that it could get substantially the same securities since those particular securities that were there on that day may not be there on the day when it talked about the account being accessed, which is going to be at some time in the future when regulatory conditions were satisfied.

**Q. If there were more than 769 million of securities in that account, would there have been any particular 769 that had to be used to pay this out in the absence of the provision**

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**that you added?**

MR. HINE: Objection to form.

A. I think the understanding was that the 769 million was all the securities that were in the account.

**Q. Okay. So if that were not correct, then it would not have been necessary to have this phrase?**

MR. WOOD: Objection to form.

A. No, it would still have been necessary to have the phrase.

**Q. Okay. That's what I am trying to understand.**

**Why would it have been necessary to have that phrase if Barclays was not being given a claim to a particular 769 million, but just 769 million in securities in that account of which there may have been significantly more than 769 million?**

MR. HINE: Object to form.

MR. WOOD: Object to the form.

A. I'm not quite sure I am capturing the point that you are trying to make here.

There were particular securities in the

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account. There were believed to be particular securities in the account. There wasn't a list of them, but whatever they were they were, and they were in the account -- they were believed to be worth 769 million. I guess if there was a lot more, then they would only receive 769 million.

**Q. Right, well, that's my point. If it was not correct that there was only 769 million in the account, if that was actually only in excess but there was actually substantially more in the account as a whole, would it have been necessary to have this clause?**

MR. HINE: Objection to form.

MR. WOOD: Objection to form.

A. It would have still been necessary to have the clause because the securities could change. Whether there were 769 or 770, the securities could still have changed over the time that was going to go by before it was possible for them to be withdrawn.

**Q. Do you know if anybody from Lehman discussed that interpretation of the clause with anybody from Barclays?**

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MR. WOOD: Objection to form.

MR. POLKES: I'm sorry, what interpretation?

MS. NEUHARDT: Excuse me?

MR. POLKES: What interpretation?

MS. NEUHARDT: The interpretation that is set forth in paragraph 8 of your declaration.

A. I do not know if anyone discussed it.

**Q. I am going to hand you what has been marked as Deposition Exhibit 1 in prior depositions. My first question will be do you recognize this document?**

A. Yes. This appears to be the Asset Purchase Agreement.

**Q. Okay. And did you participate in the drafting or negotiation of this document?**

A. I did.

**Q. Okay. If you could turn to page 6, please, and look at the definition of purchased assets. I am not going to force you to read all the subdivisions, but the intro to that definition says: "Purchased assets means all**

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of the assets of seller and its subsidiaries used in connection with the business (excluding the excluded assets) including," and then it lists out A through S of specified assets. Is that correct?

A. That's correct.

**Q. Okay. Did you understand the list of A through S to be an exclusive list?**

A. No, I wouldn't say exclusive. Primary, but not exclusive.

**Q. Okay. And what did you, in general, understand the meaning of the phrase "all of the assets of seller and its subsidiaries used in connection with the business" to mean?**

A. Well, there was -- what was being sold was an operating business and it was being done through the form of an asset transfer.

**Q. Okay.**

A. So basically it was the assets that were used in the business other than things that were being excluded.

**Q. Okay. And if you look at page 2 at the definition of business, it says: "The business means the U.S. and Canadian investment**

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banking and capital markets businesses of seller, including the fixed income and equities cash trading, brokerage, dealing, trading and advisory businesses, investment banking operations and LBI's business as a futures commission merchant."

**In your role in negotiating and drafting that -- this agreement, what was your understanding of this definition to mean?**

MR. HINE: Objection to form.

A. Again, without simply repeating the words, the business as a whole was being sold. Basically the capital markets and investment banking business of Lehman as an operating unit were being sold as a whole.

**Q. Okay. Now, when -- now, the Clarification Letter was drafted after this document; correct?**

A. That's correct.

**Q. Okay. When you were drafting the Clarification Letter and based on your understanding of the definitions of purchased assets and business and the APA as a whole, did you understand the securities to be contained**

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**in LBI's customer reserve account to be part of the assets primarily used in the business?**

MR. WOOD: Objection to the form.

MR. POLKES: I'm sorry, if you could just clarify whether you are asking him to sort of give an opinion about that now or if he had thought about it back when he was drafting the Clarification Letter, I would appreciate that.

MS. NEUHARDT: It's the time of the Clarification Letter that matters, so...

MR. POLKES: Had you thought about it then one way or the other?

A. Well, at the time of the Clarification Letter as opposed to the time of the Asset Purchase Agreement are different things. Yes, at the time of the Clarification Letter, yes.

**Q. Okay. So you considered it at that time to be part of the purchased assets, "at that time" being the time of the Clarification Letter?**

A. Well, the Clarification Letter, I think, makes it clear that they are part of the

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**purchased assets.**

**Q. Okay. And that's because it was -- they were part of the assets used in the business that was being acquired by Barclays?**

MR. HINE: Objection to form.

MR. KAY: Objection to form.

A. Well, it's because it's specifically referred to. I am not quite sure what you are asking. We just read the -- we just looked at the sentence that specifically says that those assets come along.

**Q. I understand, but I am asking whether or not you believed that regardless of whether they was specified in the clarification letter, they nonetheless were assets that were used in the business?**

A. Oh, I don't think it would have been clear one way or another without the specification in the clarification letter how you would have treated those assets.

**Q. So you don't -- you wouldn't have had an opinion one way or the other whether they would have been an asset under the Asset Purchase Agreement that was being transferred?**

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A. Oh --

MR. WOOD: Objection to the form.

A. Opinion one way or another, I would say probably the better reading of things absent the Clarification Letter would be that they would not have been included, because my understanding is that they were basically cash and government securities and those weren't within the category of things that was intended generally to transfer.

**Q. It's your understanding that an account that was used particularly for the business of maintaining a reserve for customers would not have been used in the business, would not have been an asset used in the business?**

MR. HINE: Objection to form.

MR. WOOD: Objection to form.

A. It's not a question being used in the business or not being used in the business. The question is was it intended to go as part of what was being transferred or not, and in general the terms of the agreement as, you know, I think was understandable for this type of situation, did not involve transfer of cash

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or highly liquid securities. That was just -- the buyer would have to pay for something that would just be round-tripped. It wouldn't make any sense particularly. So those assets would generally be excused even though they would otherwise might be considered part of the assets used in the business. Obviously there is always some cash used in the conduct of any business.

**Q. Okay. And is your view of that any different today?**

A. No.

MS. NEUHARDT: If we can take a short break, I am probably through, but I just want to --

MR. POLKES: Okay. That's fine.

THE VIDEOGRAPHER: The time is 2:37. We are going off the record.

(Recess was taken from 2:37 to 2:45.)

THE VIDEOGRAPHER: The time is 2:45.

We are back on the record.

BY MS. NEUHARDT:

**Q. Mr. Messineo, I just want to go back**

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**to the last discussion we were having.**

**In the APA do I correctly understand you to say that you believe the APA was essentially ambiguous on whether or not the customer reserve account would have been a purchased asset?**

MR. WOOD: Objection to the form.

A. Yes, before the Clarification Letter the APA, I think it was an issue that people could have debated.

(Continued on next page to include jurat.)

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**Q. Okay. And the Clarification Letter then would have been resolving any ambiguity?**

A. It did.

MS. NEUHARDT: Okay. I have no further questions.

MR. WOOD: I have nothing.

MR. HINE: No questions.

MR. KAY: No questions.

THE VIDEOGRAPHER: The time is 2:46.  
We are going off the record.

(Time noted: 2:46 p.m.)

ROBERT MESSINEO

Subscribed and sworn to before me  
this       day of       2010.

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# CERTIFICATE

STATE OF NEW YORK )

) SS.:

COUNTY OF NASSAU )

I, KRISTIN KOCH, a Notary Public  
within and for the State of New York, do  
hereby certify:

That ROBERT MESSINEO, the witness  
whose deposition is hereinbefore set  
forth, was duly sworn by me and that such  
deposition is a true record of the  
testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 1st day of April, 2010.

KRISTIN KOCH, RPR, RMR, CRR, CLR

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1  
2 UNITED STATES BANKRUPTCY COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
4

5 In re: )  
6 LEHMAN BROTHERS ) Chapter 11  
7 HOLDINGS, INC., et al., ) Case No. 08-13555(JMP)  
8 Debtors. )  
----- )  
9  
10  
11  
12  
13

14 HIGHLY CONFIDENTIAL DEPOSITION OF  
15 ALASTAIR BLACKWELL  
16 New York, New York  
17 Friday, August 7, 2009  
18  
19  
20  
21  
22

23 Reported by:  
24 KRISTIN KOCH, RPR, RMR, CRR, CLR  
25 JOB NO. 24037

1  
2 ALASTAIR BLACKWELL,  
3 called as a witness, having been duly sworn  
4 by a Notary Public, was examined and  
5 testified as follows:

6 EXAMINATION BY  
7 MR. HINE:

8 Q. Good morning, Mr. Blackwell.

9 A. Good morning.

10 Q. How are you?

11 A. Very good, thanks.

12 Q. I am sure your counsel has told you  
13 what's going on here today, but we are here  
14 taking a deposition involving the Lehman  
15 bankruptcy proceedings.

16 My name is Bill Hine and I am from  
17 Jones Day, which is the firm that's special  
18 counsel to LBHI. Several of the other counsel  
19 along the table will introduce themselves  
20 later, but they represent various entities that  
21 are involved in this proceeding.

22 So the way this is going to work is  
23 I am going to ask you a bunch of questions  
24 first and they will all take turns with you  
25 later as we progress.

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2 A. Understood.

3 Q. As we go, I am going to be asking  
4 you a series of questions. You are under oath,  
5 so you will answer the questions. At some  
6 points in time you will hear your counsel state  
7 an objection. That doesn't mean you don't have  
8 to answer the question. That just means he is  
9 either preserving the record or he wants to ask  
10 me to clarify the question. If he instructs  
11 you not to answer, that's up to you as well,  
12 but the mere fact that he makes an objection  
13 doesn't mean you don't have to answer the  
14 question.

15 In that vein, I'd like to ask you  
16 just please ask me to clarify any question  
17 where I might misuse an acronym or a word. I  
18 feel like I am learning a new language here  
19 reading all you folks' e-mail, so I know there  
20 is technical financial words that you guys use  
21 and you understand readily, but if you need me  
22 to clarify one, I want to have a clear question  
23 so you can answer it.

24 I think your counsel has probably  
25 told you, but you have been designated as a

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2 30(b)(6) witness for a select set of issues in  
3 this case and those issues relate to Schedules  
4 A and B of the Clarification Letter. We will  
5 get to that later, but I just want to let you  
6 know that, and that I will alert you to that  
7 fact when we get to that portion of the  
8 deposition, so in that portion you will be  
9 speaking on behalf of Barclays.

10 So I am ready to proceed if you are.  
11 Are we ready to do this?

12 A. Absolutely, yes. Thank you.

13 Q. Can we start off with a little  
14 background information about you.

15 You are currently employed by  
16 Barclays Capital; correct?

17 A. I am, yes.

18 Q. And what is your present position?

19 A. I am responsible for the Americas  
20 operations department for capital markets.

21 Q. Okay. And do you have a title?

22 A. I am a managing director.

23 Q. When did you start your employment  
24 at Barclays?

25 A. I received a contract after

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2 bankruptcy, I don't know exactly when I signed  
3 that, but it would have been, I think, two  
4 weeks after bankruptcy that I signed a contract  
5 to join Barclays. I wasn't one of those people  
6 that received an e-mail and clicked off on it,  
7 for instance.

8 Q. Okay. When did you -- that's the  
9 contract, we will get to that in a second, but  
10 when did you consider yourself a Barclays  
11 employee?

12 A. Post bankruptcy.

13 Q. Was it upon the closing of the sale  
14 transaction?

15 A. I would think so, yes.

16 Q. And just as we go forward, if I  
17 refer to the sale transaction, can we agree  
18 that that will be the transaction that closed  
19 on the 22nd of September 2008 whereby certain  
20 assets were transferred to Barclays? Can we  
21 agree on that?

22 A. What time is that?

23 Q. I don't know the time.

24 A. Midnight from that day.

25 Q. Okay. So is it fair to say after

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2 which is led by James Black and informally  
3 managed by Alex Crepeau until about a week ago.

4 **Q. When you talk about operations**  
5 **function, is there a component of that of your**  
6 **work that covers valuing or marking assets?**

7 A. I want to be very precise about the  
8 way I would describe that. There is a function  
9 in operations that values positions, but that's  
10 using data, pricing data, that is either  
11 purchased from a third party or is consumed  
12 from a front office trading source, so we are  
13 not determining a valuation on a security. We  
14 do not determine valuation.

15 **Q. But you mark the security with this**  
16 **information that you receive from a third**  
17 **source?**

18 A. It's a mechanical process.  
19 Inventory, mark, it gives you a result. It's  
20 not -- you are not applying any thought to it  
21 other than is that actually the security that  
22 our mark ties out to.

23 **Q. Could we go back now to your last**  
24 **position you held at Lehman.**

25 **First of all, how long did you work**

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2 co-head of equity operations. Alex Crepeau,  
3 who was responsible for regulatory operations,  
4 tax, operations control, client valuations and  
5 margin. I believe that's all of them from  
6 memory. In the U.K. there is a gentleman  
7 called Garth Barker Goldie, who is responsible  
8 for European operations, and in Asia,  
9 Christopher Flanagan, who was responsible for  
10 our Asian operations. And there was also --  
11 actually, there is another gentleman called  
12 Stewart Nineham who was my CAO in -- global  
13 CAO.

14 **Q. Can you explain to me in your Lehman**  
15 **role whether your group was responsible for**  
16 **valuing or marking securities? Same question**  
17 **only I am trying to see if the Lehman role was**  
18 **the same.**

19 A. It was identical. In terms of  
20 consumption of data, any model-driven pricing  
21 would be front-end trading, trading  
22 responsibility to provide a mark, and finance  
23 function at Lehman Brothers, product control,  
24 for want of a better term, was responsible for  
25 price testing, so they would test the models to

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2 **for Lehman?**

3 A. I worked for Lehman from November  
4 27th, 2000 until the 22nd of September, 2008.

5 **Q. And what was the last position you**  
6 **held at Lehman?**

7 A. I was global head of operations for  
8 both capital markets and IMD. I was in the  
9 process of taking responsibility for Aurora  
10 loan services, but I hadn't been formally  
11 announced, so that was matter of a few weeks'  
12 worth of effort, but I didn't have any formal  
13 management responsibility at that point, so you  
14 will see information in my e-mails associated  
15 with Aurora.

16 **Q. And who did you report directly to**  
17 **in that position?**

18 A. I reported to Ian Lowitt.

19 **Q. Anyone else?**

20 A. No.

21 **Q. And who were your direct reports?**

22 A. In the United States, Neal Ullman,  
23 who is global head of our clearance and custody  
24 function. Monty Forrest, who is global head of  
25 prime services operations. Kirk Butryn who was  
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2 ensure that those were accurate and produce the  
3 result that they were intended to do.

4 **Q. And who were in charge of those**  
5 **functions at Lehman; do you recall?**

6 A. The front office was various  
7 different business heads, so, I mean,  
8 ultimately it would have been Bart as president  
9 and head of risk effectively, but Gelband was  
10 responsible for the fixed income division and  
11 Jerry Donini was responsible for equities, and  
12 the IMD business theoretically didn't take any  
13 risk.

14 **Q. I don't mean to be intrusive, but I**  
15 **have to ask you some questions about your**  
16 **compensation.**

17 MR. SHAW: This is all highly  
18 confidential.

19 MR. HINE: Yes.

20 **Q. When you transitioned from Lehman,**  
21 **your position at Lehman to your position at**  
22 **Barclays, did your compensation increase?**

23 A. No, actually, it declined.

24 **Q. Declined. In what way?**

25 A. I had a two-year guarantee from

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2 **Q. Did you have an understanding of the**  
3 **terms of the Asset Purchase Agreement?**

4 A. I didn't know an Asset Purchase  
5 Agreement existed at that point.

6 **Q. Have you ever seen an Asset Purchase**  
7 **Agreement?**

8 A. I have, but not -- I have, yes, I  
9 have, but much, much, much post bankruptcy.  
10 Maybe weeks afterwards.

11 **Q. Okay. That was a badly phrased**  
12 **question.**

13 **Have you -- when I meant "Asset**  
14 **Purchase Agreement," I meant the Asset Purchase**  
15 **Agreement that's at issue in this case, which**  
16 **is the one between Barclays and Lehman.**

17 **So am I correct to understand you to**  
18 **say you didn't see that agreement until after**  
19 **the closing of the sale transaction?**

20 A. I believe so. It may have hit my  
21 e-mail. I don't ever remember reading it. I  
22 think it's highly unlikely that I saw it until  
23 after bankruptcy, and it's certainly the case  
24 that I was asking Jonathan Hughes post  
25 bankruptcy --

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2 MR. SHAW: Let's not get into any  
3 discussions you had with Jonathan.

4 MR. HINE: Is Jonathan a lawyer?

5 MR. SHAW: He is the general  
6 counsel.

7 MR. HINE: So you are asserting a  
8 privilege over that conversation?

9 MR. SHAW: Yes.

10 **Q. I just want to be clear. When we**  
11 **talk here, when you said "bankruptcy," you were**  
12 **talking LBI's bankruptcy?**

13 A. I am talking about LBI's bankruptcy,  
14 yes. I had no knowledge of an APA pre  
15 bankruptcy and the content of it.

16 **Q. Did you have any understanding of**  
17 **what the sale transaction was supposed to**  
18 **accomplish?**

19 A. I had a set of actions to perform,  
20 which was providing data to my supervisor, to  
21 Ian Lowitt, and those components were  
22 clearly -- at certain points it became clear  
23 they were part of the transaction, but I didn't  
24 know what part, and I had very limited  
25 understanding. It was perform this task, get

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2 the task done, and that's what I tried to  
3 execute as effectively as I could.

4 **Q. And so did you ever -- again, I**  
5 **understand that and we will go through those**  
6 **tasks as we go, but did you ever have any**  
7 **inkling about a \$70 billion figure with respect**  
8 **to the assets that were going to be transferred**  
9 **to Barclays?**

10 A. 70 billion?

11 **Q. Yes.**

12 A. That's not a number that sticks out  
13 in my memory, no.

14 **Q. Did you ever hear anyone talk about**  
15 **a discount that was being awarded to Barclays**  
16 **with respect to Lehman assets?**

17 A. No. And I think when I was asked  
18 what the deal content was by one of my  
19 colleagues, I pointed them in someone else's  
20 direction to the deal lawyers. I didn't have  
21 details of that.

22 **Q. Did you have any -- I'm not asking**  
23 **about whether you were involved in discussions,**  
24 **but did you hear any rumors or, you know, water**  
25 **cooler talk about a discount being awarded to**

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2 **Barclays as to Lehman assets?**

3 A. I don't think so, no.

4 **Q. Did you ever hear the phrase "block**  
5 **discount" used in connection with the sale**  
6 **transaction?**

7 A. Block discount, no.

8 **Q. Did you ever hear that phrase or a**  
9 **similar phrase used when it came to valuing**  
10 **assets that were supposed to be transferred to**  
11 **Barclays?**

12 A. No. I wasn't focused on anything  
13 related to valuation, so that wasn't really --  
14 making lists of securities was different than  
15 determining what they should be worth in  
16 aggregate.

17 **Q. We will get into that more. I**  
18 **understand.**

19 **Did you ever hear anyone refer to**  
20 **the transaction as a wash transaction or words**  
21 **to that effect?**

22 A. No.

23 **Q. Is it fair to say that you really**  
24 **were fairly unfamiliar with the specific**  
25 **contractual terms of that transaction during**

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2 (Exhibit 74 B, e-mail dated  
3 9-20-2008, marked for identification.)  
4 **Q. Mr. Blackwell, I am handing you a**  
5 **copy of a document marked as Exhibit 74 B,**  
6 **which is an e-mail stream dated September 20th,**  
7 **2008 involving yourself and several others**  
8 **including Ian Lowitt and some of your people in**  
9 **your group. I think I am mixing two concepts**  
10 **here, so I just want to get some clarification**  
11 **on what we have just been talking about after**  
12 **you have had a chance to look at the e-mail.**

13 (Document review.)

14 A. Okay.

15 **Q. Have you had a chance to look at it?**

16 A. I have.

17 **Q. Could you tell me what you recall**  
18 **about this discussion that's embodied in this**  
19 **e-mail?**

20 A. It's just a -- it's a list of things  
21 that we were working on. It's two things that  
22 we were working on. Looking for the  
23 unencumbered -- trying to define a list of  
24 unencumbered assets, and what it's saying here  
25 is that 15C3, if there is excess, and that

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2 potentially there is money that can be released  
3 as an unencumbered asset of the firm.

4 **Q. I think I understand what you said.**  
5 **I just want to make sure.**

6 This is during a period of time when  
7 your group is trying to locate unencumbered  
8 assets which would then presumably be  
9 transferred to Barclays for whatever purpose?

10 A. Right.

11 MR. SHAW: Objection. Foundation.

12 **Q. And I see here mentioned the goal is**  
13 **1.9 billion. Do you see that?**

14 A. Yes.

15 **Q. Who set that goal or where did that**  
16 **goal come from?**

17 A. Ian is saying guys, we need 1.95  
18 billion.

19 **Q. Okay. Ian is after the below**  
20 **e-mail; right? The e-mails are from the bottom**  
21 **up in sequence?**

22 A. Yes. It would have come from Ian or  
23 Paolo.

24 **Q. Do you recall any discussions about**  
25 **why we need 1.9 billion in unencumbered assets?**

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2 A. Again, people closer to the deal  
3 were negotiating whatever they were  
4 negotiating. I was being asked to carry out an  
5 action. I have a goal. Find 1.9 billion of  
6 unencumbered assets.

7 **Q. I just want to make sure, you were**  
8 **not involved in the setting of that goal or --**  
9 **am I correct to say you don't have any**  
10 **knowledge of why that number was passed down to**  
11 **you?**

12 A. I haven't -- no, I don't have  
13 knowledge.

14 **Q. And now as I read this e-mail, the**  
15 **bottom e-mail is Monty Forrest reporting on**  
16 **some of the efforts to find unencumbered**  
17 **assets; correct?**

18 A. Yes.

19 **Q. Okay. And as we get to the upper**  
20 **e-mail, Ian says he really needs 1.95 billion;**  
21 **is that right?**

22 A. Yes.

23 **Q. But I don't understand what he means**  
24 **by a shortfall in the 15C3 lock-up release.**  
25 **Can you explain that?**

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2 A. I don't know exactly -- the way I  
3 would interpret this would be if he is looking  
4 for -- if the target is to find 1.95 billion of  
5 unencumbered securities, then -- if there is no  
6 excess in the 15C3 or there is an excess, we  
7 don't know at this point, because we haven't  
8 rerun the calculation, then potentially finding  
9 more unencumbered assets because you wouldn't  
10 take -- if it is not an excess, you can't take  
11 it, so it's a sum.  
12 **Q. Is it correct to say he is asking**  
13 **for a little more in the assets in case there**  
14 **was no excess in 15C3, but actually there was a**  
15 **shortfall --**

16 MR. SHAW: Objection. Foundation.

17 **Q. -- in 15C3? Is that right?**

18 A. No, I wouldn't interpret it like  
19 that. I think he is saying find -- review --  
20 we are not looking for assets that aren't  
21 there. We are going through a process in a  
22 very methodical way based on a set of -- an  
23 understood approach which are under the rules  
24 that we would apply to our depositions, to the boxes  
25 of Lehman Brothers, to find unencumbered

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2 securities based on those rules to come up with  
3 a list. The data that we had, because Chase  
4 had failed to send files for a period of time,  
5 was incredibly difficult to work with.

6 Broker/dealer systems aren't run -- aren't used  
7 to running over a weekend, they work on a  
8 five-day week normally, so trying to create  
9 this data was difficult. So we are combing  
10 through the data to create a list of

11 unencumbered assets. We are recalculating the  
12 15C3 to see what the segregation -- what the  
13 lock-up requirement would be, on a hypothesis  
14 that as customer assets had left Lehman

15 Brothers, then the requirement for a lock-up  
16 would be reduced, so that would create an  
17 unencumbered asset. So we weren't looking for  
18 things that weren't there. We were looking for  
19 things that were there based on the  
20 challenge -- very challenged and uncertain data  
21 that we had.

22 **Q. I think I understood what you just**  
23 **said, but did you mean that over the previous**  
24 **week presumably customers had left Lehman and**  
25 **that would reduce the requirement for the 15C3**

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2 **lock-up or reserve?**

3 A. That was a hypothesis.

4 **Q. And you were doing the calculation**  
5 **to test that hypothesis?**

6 A. Yes.

7 **Q. Did it prove to be correct?**

8 A. I don't know what conclusion we  
9 ultimately reached, because the data was so  
10 challenging we didn't reach a conclusion that  
11 weekend.

12 **Q. So do you know if there was an**  
13 **excess in the end?**

14 A. I don't. I don't recall whether  
15 there was an excess or not.

16 **Q. When you say the data was so -- what**  
17 **data are you talking about?**

18 A. Stock record data. Books and  
19 records of the firm are dependent on several  
20 data feeds; trade data -- new trade data that  
21 comes from the front office, external trade  
22 data, so repo, for instance, coming from Chase,  
23 these are all of the trades -- securities we  
24 have pledged, I need that data, that needs to  
25 be fed in, and then you carry out third

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2 world -- a third-party check of your depos  
3 versus the outside world, so your custody  
4 information. We had partial information around  
5 repo coming back in and we had no visibility  
6 over our depo at Chase, because they had  
7 removed access to their systems, so we couldn't  
8 operate in the normal course of business.

9 **Q. Depo means deposit?**

10 A. Depo means like a clearing box. I  
11 would use that term interchangeably.

12 **Q. And why had Chase cut off this data**  
13 **stream?**

14 A. As a result of the funding activity  
15 that is taking place. I believe -- and this  
16 is -- I didn't have a conversation with Chase,  
17 but they rescinded access. I passed that  
18 information on to Paolo and asked him to speak  
19 to Chase, because -- he in the end called Chase  
20 and they still would not give us access to the  
21 systems.

22 **Q. Did they ever restore access to the**  
23 **system?**

24 A. Not that I'm aware of.

25 **Q. Were you party to any of those**

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2 **conversations between Lehman and Chase about**  
3 **this issue?**

4 A. No, I was not.

5 **Q. Do you have any understanding of why**  
6 **they were restricting access to the system?**

7 A. I believe it's a dispute that they  
8 had with Barclays around the financing trades  
9 that were put on at that point.

10 **Q. Do you have any more detail in your**  
11 **understanding than that?**

12 A. Just around -- just that.

13 (Exhibit 75 B, e-mail dated  
14 9-20-2008, marked for identification.)

15 **Q. Mr. Blackwell, I am handing you a**  
16 **document marked as Exhibit 75 B, which is a**  
17 **similar e-mail stream to the one you previously**  
18 **just looked at marked as sent on September**  
19 **20th, 2008. It appears to me to be the same**  
20 **e-mail stream, only the last entry is a little**  
21 **different than previously. So my question has**  
22 **to do with the first entry on page 1 after you**  
23 **have had a chance to look at it.**

24 (Document review.)

25 A. Okay.

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unencumbered.

**Q. Did you have a number of conversations with Mr. Lowitt over the weekend about the subject of the unencumbered assets?**

A. I would imagine so, yes.

**Q. But is it fair to say they kind of blur a little bit into one?**

A. It was -- yes. It was -- they did. It's hard to know exactly when and where these conversations took place, but clearly we were using e-mail a lot as well to just ask people to create it.

**Q. Were any of your conversations with Mr. Lowitt face to face?**

A. Some of them would be, yes. Ian was not -- some of them might have been. Fairly infrequently.

**Q. Did Mr. Lowitt prefer to communicate by e-mail?**

A. I just had a very narrow set of actions I was focused on, right, so I think it wasn't a question whether he preferred to communicate or not. I was doing the task that had been sent me and he wanted updates. He

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would send "any update." I think there are lots of e-mails like that, and there were lots of e-mails from me to the various teams that were working on these things saying "any updates."

**Q. Understood. Do you remember when your first conversation with Mr. Lowitt was about this task that he had sent you?**

A. No, and it's possible it was Paolo that initiated the work even. Paolo Tonucci may have even initiated the work.

**Q. So you may have gotten your marching orders indirectly from Mr. Lowitt?**

A. That's quite possible.

**Q. You said that your task changed over time and that your first task was to determine whether there was, in fact, any unencumbered assets; is that correct?**

A. Correct.

**Q. Did you have any understanding of why it was you had been sent this task?**

MR. SHAW: Objection. Asked and answered.

A. As I stated earlier, I had a goal

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that was sent me. It wasn't a period of time when we were asking lots of questions about why we were doing it.

**Q. Did you come to learn at any time that the purpose of you and your team identifying unencumbered assets was that they be transferred to Barclays?**

MR. SHAW: Objection. Asked and answered.

A. There was a -- my understanding was at some point later on over the course of the weekend, I actually think it may even have been the Monday that we were talking about transferring these assets, talking with I think the trustee of LBI even at that point.

**Q. That was a conversation you had with the trustee of LBI?**

A. I didn't, no, but people within my organization or people within the former Lehman organization were having those conversations.

**Q. Okay. What do you remember about that conversation?**

A. I don't -- I didn't have it, so I don't recall it.

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**Q. You just remember that there was a conversation with the trustee?**

A. Yes.

MR. SHAW: Objection.

**Q. About the subject of transferring assets?**

A. I recall that there were -- there was a dialogue with the trustee.

**Q. When you say "the trustee," do you mean the trustee directly or the trustee's office and his staff?**

A. I think it's probably something like Anson Frelinghuysen.

**Q. We will put that under staff.**

The second part of your marching orders appears to be to ascertain the existence or otherwise of any excess in Lehman's 15C3 account; is that correct?

A. It was to recalculate the 15C3. The moneys and securities that were locked up in association with that were managed by the treasury function, I contributed data into the calculation which finance ran and we ran that calculation.

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2 **Q. And as I understand it, it is**  
3 **Mr. Tonucci's team I think you said owns that**  
4 **calculation?**

5 A. No, it's not. It's Tony Stucchio  
6 who reported to Martin Kelly.

7 **Q. And Mr. Kelly's position at the time**  
8 **was?**

9 A. Financial controller.

10 **Q. And that's a separate reporting**  
11 **stream from yourself and separate --**

12 A. Reported to Ian.

13 **Q. And separate from Mr. Tonucci?**

14 A. Paolo reported to Ian.

15 **Q. Did anybody tell you at any point,**  
16 **Mr. Blackwell, that a certain amount of the**  
17 **excess, if any, in the 15C3 fund was to be**  
18 **transferred to Barclays?**

19 MR. SHAW: Objection to form. Asked  
20 and answered.

21 A. There was a discussion about a  
22 mechanism potentially, and I think I had that  
23 conversation with Gerard LaRocco, to transfer  
24 cash if the SEC, Mike Macchiaroli, signed off  
25 that there was, indeed, an excess at a point in

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2 time. Now, that changed. That was a mechanism  
3 we looked at and discarded. So that's the only  
4 conversation that I had around moving cash.

5 **Q. When did you have that conversation**  
6 **with Mr. LaRocco?**

7 A. I don't recall, again, exactly the  
8 exact time. It was probably on -- late on  
9 Saturday, maybe Sunday, but certainly over that  
10 weekend.

11 **Q. Mr. LaRocco was employed by Barclays**  
12 **at that time; correct?**

13 A. Correct, but that was more about how  
14 do you technically move money over a weekend.

15 **Q. What was the mechanism you discussed**  
16 **with Mr. LaRocco?**

17 A. This is an operational process. You  
18 can't move money on a weekend, so discussing  
19 opening up a bank account at -- I think it was  
20 at Wells Fargo. We didn't pursue that any  
21 further.

22 **Q. It sounded like you also discussed**  
23 **with Mr. LaRocco the need for the SEC to sign**  
24 **off on any transfer of 15C3 funds; is that**  
25 **accurate?**

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2 A. Well, the SEC would have to give --  
3 it is a bankrupt entity -- or the SEC would  
4 need to approve any cash movement out of the C3  
5 lock-up.

6 **Q. What's the basis of your knowledge**  
7 **about that subject?**

8 A. Just -- what do you mean by the  
9 "basis"?

10 **Q. How is it you are able to testify**  
11 **about that fact?**

12 A. What fact?

13 **Q. That the SEC would have to approve**  
14 **any transfer from a bankrupt entity.**

15 A. Because of the experience that I  
16 have had.

17 **Q. That's all I was asking.**

18 **Did you have any conversations with**  
19 **the SEC that weekend about the subject of the**  
20 **15C3 in particular?**

21 A. Not over that weekend, no. I think  
22 I had conversations with -- I had many  
23 conversations with the SEC post, but not over  
24 that weekend.

25 **Q. The conversations that you have had**

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2 **with the SEC subsequent to that weekend, are**  
3 **they related to the transfer of funds from**  
4 **Lehman's 15C3 account to Barclays?**

5 MR. SHAW: Objection. Form.

6 A. I wouldn't characterize them that  
7 way. The -- no, I wouldn't characterize them  
8 that way.

9 **Q. How would you characterize them?**

10 A. The conversations I had with the SEC  
11 have been around asset transfers, not  
12 necessarily related to moneys due from the  
13 15C3, although I think I have had one  
14 conversation post the LBI bankruptcy with Mike  
15 Macchiaroli and some other members of his  
16 office where we discussed this and provided --  
17 I think we may have -- we had a discussion  
18 around the 15C3. That was probably the only  
19 direct conversation we have had specifically  
20 around the 15C3. Then in relation to other  
21 asset transfers, the PIM asset transfer, we  
22 have had a plethora of conversations of which  
23 the 15C3 is a source of customer protection  
24 and, therefore, moneys that you would expect  
25 would be released as it relates to the PIM

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2 transfer, so it's slightly tangential.  
3 **Q. When did you have this conversation**  
4 **with Mr. Macchiaroli?**  
5 A. I don't know the exact date. It was  
6 probably on the Tuesday -- sometime in the  
7 first week.  
8 **Q. And when you say "the first week,"**  
9 **just so we have a clear record --**  
10 A. My first week at Barclays.  
11 **Q. Who else was present for that**  
12 **conversation with Mr. Macchiaroli?**  
13 A. Kendall McLaughlin and Alex Crepeau,  
14 I think. I may not be correct.  
15 **Q. Who is Kendall McLaughlin?**  
16 A. He was responsible for regulatory  
17 operations at Lehman Brothers.  
18 **Q. Does he work for Barclays now?**  
19 A. He does not at present. He did  
20 transfer. He subsequently left.  
21 **Q. Do you know where he is employed**  
22 **now?**  
23 A. Citibank.  
24 **Q. And Mr. Crepeau you mentioned**  
25 **earlier. Was he --**

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2 of --  
3 A. I think it's later.  
4 **Q. The week of Monday 29th?**  
5 A. Or even possibly later.  
6 **Q. Possibly afterwards?**  
7 A. Yes. So we were talking about the  
8 transfer of the loan, the cash in the 15C3 that  
9 was related to the margin loans, and that was,  
10 I think, the first element of the conversation,  
11 and I think the second component of the  
12 conversation was as it related to the  
13 \$769 million worth of securities, Ginnie Maes  
14 held at Chase that potentially were going to be  
15 delivered as part of the -- that was one way to  
16 satisfy the component of the APA, it would  
17 either be securities or some alternative value.  
18 **Q. Can you explain to me a little more**  
19 **about your conversation that related to the**  
20 **first alternative, the first part. You said it**  
21 **was cash in the 15C3 account or fund that**  
22 **related to the margin. What do you mean by**  
23 **that?**  
24 A. That's related to PIM. PIM  
25 customers take, borrow money against their

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2 A. Kendall's boss.  
3 **Q. Did he transfer to Barclays?**  
4 A. He did.  
5 **Q. And is he still employed by**  
6 **Barclays?**  
7 A. He is.  
8 **Q. Do you know what his position is?**  
9 A. He is responsible for regulatory  
10 operations. He replaced Kendall. He had  
11 previously post bankruptcy been responsible for  
12 the LBI TSA, the services provided by Barclays  
13 to LBI for operations only.  
14 **Q. Do you recall why it is you met with**  
15 **Mr. Macchiaroli?**  
16 A. Yes. We discussed the potential  
17 transfer of -- we wanted to transfer the  
18 initial funding of the PIM accounts so -- this  
19 is actually -- this meeting is later. This is  
20 a week later, actually. Sorry. My  
21 recollection is wrong. This is later on, this  
22 meeting.  
23 **Q. So if we are talking about the**  
24 **closing of the deal on Monday, the 22nd, of**  
25 **September, you think it's sometime the week**

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2 positions. They can borrow up to 440 percent  
3 of value.  
4 **Q. And you said the second subject, I**  
5 **think probably the subject that I am more**  
6 **interested in, is the \$769 million of Ginnie**  
7 **Mae securities that you said were potentially**  
8 **to be transferred pursuant to the agreement**  
9 **with Barclays; correct?**  
10 A. 769 value, so that was either going  
11 to be satisfied through Ginnie Maes or other  
12 alternative value, if there is an excess in the  
13 C3, the 769 value.  
14 **Q. It sounds like you have an**  
15 **understanding now of the deal between Barclays**  
16 **and Lehman, is that correct, at least in this**  
17 **respect?**  
18 A. Yes.  
19 **Q. Can you tell me without waiving any**  
20 **privilege, of course, and any of my questions**  
21 **are not designed to discover information that**  
22 **you discussed with your attorneys, but can you**  
23 **tell me how it is you came to have that**  
24 **understanding of the APA. I ask because your**  
25 **answers to Mr. Hine's questions suggested you**

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weren't really involved and have no knowledge of the deal and now you are telling me you have some knowledge of the deal.

A. This was after the event, after the deal had closed, I believe, and that was where these conversations began, in terms of actioning the content of the deal.

**Q. Right. Okay.**

A. It doesn't mean I had an understanding of the whole deal.

**Q. I understand. I don't think you quite answered my question, though, which is how is it that you came to have an understanding that this was a term of the deal?**

MR. SHAW: If you can answer the question without revealing discussions with counsel.

A. That is probably the most likely source.

**Q. Okay. Let's try it this way. What did you and Mr. Macchiaroli discuss in this meeting that you testified about that took place sometime in the week of September 29th or perhaps later?**

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A. Asking the SEC to review the calculation and release and authorize -- provide their sign-off that the C3 had an excess or otherwise, but have an opinion on the C3 and authorize a sign-off to the trustee of LBI to release the cash related to the margin balances, as I mentioned before, another element of the PIM transfer, and securities from -- securities from JPMorgan Chase.

**Q. Was this a meeting that you had requested, Mr. Blackwell?**

A. I don't recall whether I requested it. It's quite possible I did. The SEC set up an office at 745, so were available.

**Q. Where did the meeting take place, at the SEC's office at 745?**

A. Correct.

**Q. And this was Mr. Macchiaroli's office?**

A. Yes.

**Q. Do you have any notes of the conversation you had there?**

A. I don't believe I do. I could go back to my -- I could go back and try and

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review my papers.

**Q. Where would they be if you had them?**

A. Where would they be? They are most likely going to be in my e-mail and they are also potentially in my boxes of files which I have already reviewed and looked through, so I can do that based on these questions.

**Q. Your counsel and I can talk off the record about our document requests.**

**What was Mr. Macchiaroli's response to your request that the SEC review and sign off the 15C3 calculation?**

A. I don't think he was comfortable doing it, doing that at that point. He wanted to get a better understanding of the books and records at that point. So I think we continued to work with members of the SEC and to try and provide them with a better understanding and the finance team probably led that effort in terms of the overall 15C3.

**Q. At the time you asked Mr. Macchiaroli to sign off on this calculation -- withdrawn. I am going to set that up a little better.**

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**You testified in response to Mr. Hine's questions that you were uncomfortable about the accuracy of the C3 calculation over the weekend of September 20th and 21st; correct?**

A. To be precise, what I said, I was uncomfortable about some of the inputs into the calculation, not the calculation itself.

**Q. I didn't mean to mischaracterize your testimony. I didn't mean to suggest that somehow the formula wasn't properly applied, but it seemed to me that as of Sunday night, the 21st, you were not comfortable that the calculation, because of the reasons you have testified to, you are not comfortable that the calculation or the result of the calculation was a hundred percent accurate; is that correct?**

A. That's correct.

**Q. And what happened between Sunday the 21st of September and this meeting with the SEC a week or so hence that allowed you to become comfortable that the calculation was correct?**

A. I wasn't talking about the accuracy

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1  
2 UNITED STATES BANKRUPTCY COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS Case No. 08-13555(JMP)  
8 HOLDINGS, INC., et al, (Jointly Administered)  
9 Debtors.

10 -----x

11  
12 DEPOSITION OF ELIZABETH JAMES

13 New York, New York

14 January 14, 2010

15  
16 Reported by:

17 MARY F. BOWMAN, RPR, CRR

18 JOB NO. 27055  
19  
20  
21  
22  
23  
24  
25

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**Q. Beginning of 2009?**

A. Yes.

**Q. Do you know where he is employed today?**

A. I believe he is at Credit Suisse. But I'm not 100 percent sure.

**Q. Approximately how long did the conversation with Ms. Taylor last on Sunday evening?**

A. It was literally a five-minute conversation. She -- it was an, "Are you prepared to talk to Jeff Jennings," and the response was, "Yes, we are," and she then put Jeff on the phone, so -- I suppose like a go-between.

And then she put Jeff on the phone and we made arrangements to actually go into the Lehman offices on Monday morning.

**Q. Did Ms. Taylor remain on the phone while Mr. Jennings was on the phone with you and Mr. Stack?**

A. I'm actually not sure, to be honest.

**Q. And approximately how long did the whole conversation take?**

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A. It was literally -- she introduced, we said yes, and we arranged then with Jeff to go into the offices on Monday morning. That was it. That was the whole of the conversation.

**Q. That affirmative yes was a decision by Mr. Stack or you?**

A. Mr. Stack.

**Q. Did you then proceed to have that meeting at Lehman on Monday morning?**

A. Yes, we did.

**Q. What time did that take place?**

A. I think it was 9 a.m.

**Q. And that's Lehman's offices at 745 7th Avenue?**

A. Right, correct.

**Q. Who was present for that meeting?**

A. There was Tim Stack, myself, Sean Byrne, B-Y-R-N-E, Alexandra Guest, who are all Barclays employees. There was Ken Raisler, who is our counsel.

**Q. Sullivan & Cromwell; is that right?**

A. Yeah.

And then from the Lehman side, there was Jeff Jennings, Donna Moran, Adam Cohen, TSG Reporting - Worldwide 877-702-9580

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Michael Macchiavernia, and Ron Filler. And Mike Nielsen was on the phone.

**Q. Just starting with the Barclays employees, Tim Stack's position at the time was?**

A. Global head of futures for Barclays.

**Q. Is that his position today?**

A. Yes.

**Q. And you're currently employed as director in the futures sales department for Barclays?**

A. Correct, yeah.

**Q. Was that your title at the time?**

A. Yes.

**Q. And Sean Byrne, what was his title?**

A. Sean was the U.S. futures head at that time.

**Q. Is he currently employed by Barclays?**

A. He is.

**Q. What's his role today?**

A. He runs sales and trading for futures.

**Q. Alexandra Guest, what was her --**

A. Is our compliance officer.

**Q. And was she your compliance officer at the time of the meeting?**

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A. Yeah.

**Q. So we have four Barclays employees there?**

A. Yes.

**Q. If you indicate affirmatively, it is easier for Mary to take down.**

A. Sorry.

**Q. So on the Lehman side, we have discussed Jeff Jennings already. The second person you identified was Donna?**

A. Donna Moran, and she was sales.

**Q. Is she employed by Barclays today?**

A. No.

**Q. Did she ever take a position at Barclays?**

A. Yes, she did.

**Q. Do you know when she left?**

A. It was the end of the summer.

**Q. Do you know where she is employed today?**

A. I don't believe she is.

**Q. You don't believe she is employed by anyone?**

A. No.

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A. I reached out to George Paragham.

**Q. How do you spell Paragham?**

A. P-A-R-A-G-H-A-M.

**Q. And do those underlying account statements that you used to create Exhibit 1, are those all once the exchange has closed out all of Lehman's proprietary future positions?**

A. Let me just clarify something. Not all of the positions were closed by the exchange. Our Barclays traders had to close some of those positions.

**Q. Understood.**

A. Yeah.

**Q. With that clarification in mind, do the account statements that underlie this exhibit all reflect the positions that Lehman held at these brokers or custodians once the accounts had been closed out?**

MS. BLOOMER: Objection to the vague use of the words "positions" and "accounts."

A. Yes.

**Q. Did those reports include any information about what of this collateral was held as margin?**

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MS. BLOOMER: Objection to the form.

A. I'm not sure what you --

**Q. I'll ask a better question. I'll try to at least.**

**You described this as undelivered margin, correct?**

A. Yes.

**Q. This 457 million dollars that you have in Exhibit 1 you described as undelivered margin.**

A. It's -- it's--

**Q. Why do you describe it as margin?**

A. It is the money that's sitting in the account at the brokers that has not come back.

**Q. And do you know how much of it was used at margin -- as margin at the time of closing?**

A. It would all be margin. That's what it is in the account.

**Q. Do you know how much of the margin was excess to the minimum required by each exchange?**

MS. BLOOMER: Objection to the form.

A. You need to clarify what you mean by "excess."

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**Q. I am sorry, I thought I did.**

**Each exchange requires a certain minimum number, amount of margin for each position, correct?**

A. Yes.

**Q. And from time to time, Lehman would have margin that exceeds those requirements, correct?**

A. Yes.

**Q. Do the reports that you base this report on explain what the exchange minimum margin was and whether there was any excess margin beyond that?**

A. No. But it -- we need to clarify -- no. And the -- when you -- margin and -- when you have money in an account, that is your margin account. OK? That can be more than the requirement for the initial margin for your current position, because a lot of these exchanges, you have to prefund your trading. So unless you have money in the account, you can't trade.

So margin is -- it is -- it is one of those clarifications between margin and excess.

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I'm just trying to -- I want to make sure that we are not --

**Q. Are you able to tell me whether at the time of closing, these accounts contained margin that was in excess of the minimum required by each exchange? And I'm referring to the account and the broker custodian accounts referenced on Exhibit 1 to your declaration.**

MS. BLOOMER: Objection to the form.

You are asking whether she can tell you that now or whether she knew that then?

MR. OXFORD: I am asking whether she can tell me now.

A. I would have to go and look.

**Q. Do you know whether or not Barclays knew at the time of closing what -- sorry, whether these accounts included excess margin?**

A. We had no idea.

**Q. Why did you have no idea?**

A. Because Lehman didn't either. Sorry.

**Q. Can you explain that a little further?**

A. When Barclays took over on September 22, we actually asked the Lehman operations people for a list of their positions

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and their brokers and their accounts, and they were not capable of giving it to us. And in fact, it took a fair number of days for us to get all the information that was required, because their books and records were in such a mess.

And in fact, the proprietary trades that were in these accounts we didn't even know were there for a couple of days, because they couldn't actually tell us that they were there.

**Q. Do you know whether or not Barclays asked Lehman prior to the closing for information about its proprietary future trades?**

A. I don't know.

**Q. When did Barclays first learn about the margin that is reflected in Exhibit 1, the 457 million dollars?**

A. When we first knew it was actually in -- the amount of money that was in the accounts or the amount of money that was in the accounts after the positions had been closed?

**Q. Sorry. That's a good distinction.**

**When did -- I am sorry, withdrawn.**

**When did Barclays first learn that**

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**Lehman had proprietary future accounts?**

A. In the week following the 22nd.

**Q. Do you know whether or not Barclays asked Lehman whether there were proprietary future accounts prior to closing?**

A. I don't believe so. I don't know.

**Q. And can you be more specific in terms of when Barclays first learned about these proprietary future accounts?**

A. On September 22, once we had taken over, we requested information on all of the accounts. So the customers' accounts, the broker relationships, and what the positions were.

And between the 22nd and the -- which was the Monday, and the Thursday or the Friday, the operations guys actually kept coming up with new house positions that they didn't actually tell us on day one.

So on the 22nd, we were informed of -- and even though -- the VIX positions, which are not on this exhibit because they were for the affiliates. It slowly came to light that they had positions sitting in house accounts, over TSG Reporting - Worldwide 877-702-9580

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the course of that week.

**Q. Who were the operations guys that you were getting this information from?**

A. Mike Nielsen, who ran global operations for Lehman.

**Q. Is he employed --**

A. And people that work for him. And no, he is not still with...

**Q. He is the same Mike Nielsen who was at the meeting on the 15th?**

A. Correct.

**Q. Do you know where he works today?**

A. As I said earlier, I think he works for a charity.

**Q. Sorry.**

A. That's OK.

**Q. Do you know which of these accounts were closed out by Barclays and which were closed out by the exchanges?**

A. Not off the top of my head, no, because it was not something I personally did.

**Q. Have you seen account statements from the brokers or custodians that reflect the margin requirements as of closing?**

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A. I have seen them, yes.

**Q. How is it you came to see them?**

A. In E -- the E-1 document -- the other, the one that was referred to in -- those statements were as of the time of the open positions. So would they have the numbers on? Yes. Did I look at them? No.

**Q. Do you know whether or not those account statements were available to Lehman at the time of the closing?**

A. I would hope so.

**Q. Do those account statements, to your knowledge, break down the margin between the various forms in which margin might be held, such as cash or securities?**

A. They should do, yes.

MR. OXFORD: And Trish, do you know if these have been produced to us?

MS. BLOOMER: Broker statements? I'll have to confirm that. I assume that they were produced, but I can't be sure, so I'll confirm and let you know.

MR. OXFORD: Thank you.

MS. BLOOMER: And you're talking about

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the broker statements, would you be able to answer that question about the total value or net equity of the open positions in that account?

MS. BLOOMER: Objection to the form.  
A. Yes. I could point out the open trade equity number on those statements, yes.

Q. And I think you testified before, but I just want to be clear, you could also identify from those statements how much collateral or margin was posted against those open trades? Correct?

MS. BLOOMER: Objection to the form.  
Mischaracterizes.

A. Can we just clarify, you'd want to know what the actual requirement from the broker was for those positions?

Q. That's my next question.

A. Oh. Then I don't understand the first one, sorry.

Q. You have told me that in order to calculate the total open trade equity of a set of positions in a particular account, and we are discussing this in the context of the

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proprietary futures accounts that are reflected on Exhibit 1 to your declaration, you would look at the broker's statement and that would tell you the answer to that question, correct?

A. Correct.

Q. Would that same broker's statement also tell you how much margin was required by the broker or the exchange to be posted as against those positions?

A. It should do. And I -- that's why I am saying it should.

Q. And would those broker statements that you have just testified about typically reflect whether or not there was excess margin or collateral posted over and above the minimum requirements by that exchange or clearing house?

A. Can we just clarify what you mean by excess here? Because I have a problem with the word "excess," I'll be very honest. Because "excess" kind of gives the impression that it is, you know, free money, and it is really not. Let's be honest about this.

So that's why I want to clarify when you use "excess," "excess" in the futures world

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is a very different word to what's used in the rest of the world. So I want to clarify, what do you mean by "excess"?

Q. I mean more than -- well, withdrawn. Would the broker reports that you would look to, to calculate or to show you what the total open equity positions were, would those same broker reports show you the margin required by that exchange?

A. They should do, and the reason I am saying they should is because certain of the brokers that they used, it does not, which is why I am...

Q. And would those same statements typically show the amount of collateral that was posted in addition to the amount of collateral that was required by that exchange?

MS. BLOOMER: Objection to the form.

At the time -- at the snapshot of the broker's statement or -- I mean, I don't think the question is clear about what time you're talking about a requirement.

Q. I'm talking about at any given date, but particularly September 19, 2008.

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A. But I can't talk to September 19. That's -- that's my problem.

Q. I understand. I'm not asking you -- Ms. James, I'm not asking you what you did. I understand your testimony that you were not involved in any such due diligence.

A. Right.

Q. I am asking you if you had to answer this question, how would you go about doing it? Does that help you answer the question?

A. OK. And this is why I want to clarify "excess," because the problem is, people have the habit of using the word "excess" as though it is something that shouldn't be there. OK. Which is not the case in the futures world.

What you need to understand with the way the futures account works, the money that's held on your futures account is there to secure your trading in that environment. Yup. So you will have your open trade equity value that moves every single day. You will have cash on the account that you have put up to cover that open trade equity, OK. You will have an initial margin requirement that has been calculated

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based on the position you have open at that time.

And then there may or may not be -- and then you'll get what we call your excess deficit. OK? Which is known in the futures world as period, this is the money that is above and beyond what is required for this particular day's trading. OK?

That money can also be used or is also used to fund your intraday margin calls, which of course you don't know what they are at the time, and also on certain exchanges your prefunding. So in most of the Asian exchanges, you have to prefund. So if you want to trade, unless you have got money or collateral securities in the account, you cannot trade.

Which is why the word "excess" is a bit -- that's why I have a problem with it, sorry, because people assume "excess" is something that somebody could have taken away, and that's actually not the case.

**Q. I appreciate that answer. That clears up a lot for me. Thank you.**

A. So yes, if somebody said to me -- yes,  
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I would look at the broker's statements and hopefully get all the information that's required.

**Q. And if in this example, Lehman were to have closed out at the end of the day on the 19th of September their proprietary futures positions, would you be -- by looking at those statements, be able to tell how much equity or value would be returned to Lehman?**

MS. BLOOMER: Objection to form. And foundation.

A. I just want to double check. If I looked at a broker statement that Lehman had, they have closed the positions, what the value was? No.

**Q. Why is that?**

A. Because all I can tell you is the balance in the account.

**Q. And why are you not able to tell me the value that would return to Lehman if those positions were closed out?**

A. Well, can we just clarify what you mean by "value"? Because perhaps -- to me, with all the conversations we have had earlier,  
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value, we have been talking about the open trade equity to the value of the open positions. There is no open positions, there is no value.

**Q. Right. Maybe I can --**

A. Sorry.

**Q. Let's go back. Let's go back to Exhibit 1, because I think we are getting close here.**

**In the accounts reflected in Exhibit 1, there were open positions that Lehman held as of the 19th of September, 2008, correct?**

A. Yes.

**Q. And there was also margin?**

A. Yup.

**Q. And you have told me that you think you would be able to tell me by looking at the broker statements, with some exceptions, what the value of those open positions was at the close of a particular date.**

MS. BLOOMER: Objection to form.

**Q. How then would you calculate -- withdrawn.**

**You have also told me those broker statements would include how much margin or**  
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**collateral was posted against those positions, right?**

A. It should do, yes.

**Q. And also how much margin was required against those positions on -- by the exchange.**

MS. BLOOMER: Objection to the form. Mischaracterizes the testimony.

**Q. Correct?**

A. It should do. Yes.

**Q. And then if Lehman were on Monday morning, when the exchange is opened, to liquidate those trades, does the broker statement that you have been talking about tell you how much value would return to Lehman?**

MS. BLOOMER: After the liquidation?

MR. OXFORD: Yes.

A. It would give you the total amount in the account that they could remove. Exactly the same as my Exhibit 1.

**Q. I see.**

MR. OXFORD: Now might be a good time for a lunch break.

MS. BLOOMER: OK.

(Luncheon recess; 12:25 p.m.)

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<p>1 JAMES</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 AFTERNOON SESSION</p> <p>3 1:21 p.m.</p> <p>4 THE WITNESS: I wanted to go back and</p> <p>5 clarify something. When we were talking</p> <p>6 before the break about the closeouts and</p> <p>7 looking at the statement and the value, and</p> <p>8 I had to go back and read the question,</p> <p>9 sorry, I've muddled the two together, yeah,</p> <p>10 because the question was, can you tell from</p> <p>11 the statement the value of the positions,</p> <p>12 which is correct, you can.</p> <p>13 But can you tell the value of those</p> <p>14 positions prior to them being liquidated?</p> <p>15 No, you can't, which is what I just want to</p> <p>16 clarify.</p> <p>17 So can you look at a statement and</p> <p>18 tell what its value is going to be? No.</p> <p>19 BY MR. OXFORD:</p> <p>20 Q. What would you have to look at to</p> <p>21 determine the -- what the value of those</p> <p>22 positions are going to be?</p> <p>23 A. Well, you can't. I don't have a</p> <p>24 crystal ball. Because the problem is, you don't</p> <p>25 know what price you are going to close out at.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 JAMES</p> <p>2 And that's why I wanted to go back and double</p> <p>3 check what was said again, because you said can</p> <p>4 you tell from the broker's statement, and then</p> <p>5 they close them, and I thought it was the other</p> <p>6 way around.</p> <p>7 So I thought we said can you tell from</p> <p>8 a broker's statement after you have closed them,</p> <p>9 yes. Can you tell before they have closed them,</p> <p>10 no. All you can tell is the value as of last</p> <p>11 night. But you can't tell what the value of</p> <p>12 that closeout is until you physically close it</p> <p>13 in the market.</p> <p>14 Q. Because the market will move?</p> <p>15 A. The positions are going to move. It</p> <p>16 is a volatile -- which it was at that time. It</p> <p>17 is moving around all over the place. So you</p> <p>18 can't -- and I thought we meant -- yes, you can</p> <p>19 look at the statement after they have been</p> <p>20 closed. You can't look at the statement before</p> <p>21 they have been closed. Does that --</p> <p>22 Q. I think I --</p> <p>23 A. Sorry.</p> <p>24 Q. I think I understand your</p> <p>25 clarification.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 If you were to look at the broker's</p> <p>3 statements that you testified to just before</p> <p>4 lunch --</p> <p>5 A. Yeah.</p> <p>6 MS. BLOOMER: These are the statements</p> <p>7 on the 19th.</p> <p>8 Q. The statements on the 19th. You would</p> <p>9 be able to tell the total open equity positions</p> <p>10 in that account, correct?</p> <p>11 A. Yes. As of close of business of the</p> <p>12 19th.</p> <p>13 Q. And you would also know the exchange</p> <p>14 minimum margin that the exchange requires as</p> <p>15 against those positions, correct?</p> <p>16 A. As of close of business on the 19th,</p> <p>17 correct.</p> <p>18 Q. And you would also know the total</p> <p>19 collateral posted against those exchange minimum</p> <p>20 margin requirements, correct?</p> <p>21 A. Yes.</p> <p>22 Q. So you would know whether there was</p> <p>23 more or less collateral than the exchange</p> <p>24 minimum margin with, in fact, the close of</p> <p>25 business on the 19th?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 JAMES</p> <p>2 for the 19th trading. It would be the same</p> <p>3 reports on the Saturday and the Sunday.</p> <p>4 Q. I see. So if you on Sunday looked at</p> <p>5 a report that has Friday's close prices, that</p> <p>6 would be delivered sometime in the wee hours</p> <p>7 Friday night, Saturday morning, you would be</p> <p>8 able to tell what the, in this case the OCC's</p> <p>9 margin requirements were, correct?</p> <p>10 MS. BLOOMER: Objection to form.</p> <p>11 A. You can tell what the OCC states the</p> <p>12 number to be.</p> <p>13 Q. Right. I understand an individual</p> <p>14 participant may have a different view and may be</p> <p>15 able to negotiate that with the OCC.</p> <p>16 A. Well --</p> <p>17 Q. May have a different view than the OCC</p> <p>18 on that margin requirement.</p> <p>19 MS. BLOOMER: Objection. Is that a</p> <p>20 question, what you understand?</p> <p>21 Q. Is that correct?</p> <p>22 A. Hang on, wait a minute.</p> <p>23 Q. Withdrawn. It is not -- it is not</p> <p>24 material.</p> <p>25 Just to round out this set of</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 questions, Ms. James, you told me a few minutes</p> <p>3 ago that the purpose of the margin was to make</p> <p>4 sure that the exchange has enough money to pay</p> <p>5 the opposite side of the trade.</p> <p>6 MS. BLOOMER: Objection.</p> <p>7 Mischaracterizes the testimony.</p> <p>8 Q. Is that what you said?</p> <p>9 A. At --</p> <p>10 Q. Is that a -- is that a fair</p> <p>11 characterization of what you said, if not word</p> <p>12 for word?</p> <p>13 A. Can we go back and check, that's</p> <p>14 exactly what I said?</p> <p>15 MS. BLOOMER: Do you want her to</p> <p>16 confirm that it is word for word what she</p> <p>17 said?</p> <p>18 MR. OXFORD: I'm just trying to lay</p> <p>19 the foundation.</p> <p>20 MS. BLOOMER: Fair enough.</p> <p>21 You can answer the question to the</p> <p>22 best that you can.</p> <p>23 A. I think that's -- I would have to go</p> <p>24 back and check exactly what I said. I don't</p> <p>25 remember word for word, I'll be honest.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 JAMES</p> <p>2 Q. So in our example, on Monday morning,</p> <p>3 before the markets open, the OCC would have set</p> <p>4 the margin so that they would have enough money</p> <p>5 to pay the opposite side of the trade in what</p> <p>6 eventuality?</p> <p>7 MS. BLOOMER: Objection to form.</p> <p>8 A. In -- what do you mean, in --</p> <p>9 Q. Why does the exchange need to have</p> <p>10 margin so that they know they have enough money</p> <p>11 to pay the other side of the trade?</p> <p>12 MS. BLOOMER: Objection to form.</p> <p>13 Q. Is it in case of default by the</p> <p>14 member?</p> <p>15 A. It is default by the member, but it's</p> <p>16 also the volatility of the trading that's going</p> <p>17 to occur that day. So the initial margin is</p> <p>18 there. OK. And the initial margin is normally</p> <p>19 based on a certain amount of movement in the</p> <p>20 market during the trading day. OK. So -- and</p> <p>21 this may be more detail than you need.</p> <p>22 They have what they call limit up and</p> <p>23 limit down, and based on how much the market</p> <p>24 moves up or the market moves down, it is never</p> <p>25 more than the range of that initial margin. If</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 it is, they end up halting trading and calling</p> <p>3 more initial margin.</p> <p>4 Now, because of the volatility at that</p> <p>5 time in the markets in the two, three weeks</p> <p>6 before and the three, four weeks after, let's be</p> <p>7 honest about this, it was a constant move on</p> <p>8 that initial margin requirement and what was</p> <p>9 being called.</p> <p>10 So yes, on the morning, there would</p> <p>11 have been initial margin requirement, and I'm</p> <p>12 pretty sure there was another call at intraday,</p> <p>13 another call in the afternoon. There was a</p> <p>14 constant moving target.</p> <p>15 Q. Do you know whether or not when</p> <p>16 Barclays started trading Lehman's positions,</p> <p>17 customer and firm, for options and futures on</p> <p>18 September 22 of 2008, do you know whether there</p> <p>19 in fact was an additional margin call made by</p> <p>20 any exchange?</p> <p>21 A. You said traded customers' positions.</p> <p>22 You don't trade -- that's what you --</p> <p>23 Q. Sorry.</p> <p>24 A. Sorry. I just -- customers trade for</p> <p>25 themselves.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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**Q. Right.**

A. I don't know. I would have to go back and check.

**Q. Looking at the OCC statements, for example, to continue that example, that reflect Friday night's close, the 19th.**

MS. BLOOMER: Which statement in your question reflects Friday night's close? What statement are you talking about in your question?

MR. OXFORD: We can look at a specific statement this afternoon, but I'm trying to understand the subject generally.

MS. BLOOMER: OK. I just want to be sure that she understands the question.

**Q. It is your testimony, if I am understanding you properly, you would be able to tell on Monday morning what the open equity positions were in any particular account, correct?**

A. As of close of business of the 19th, yes.

**Q. Correct.**

**So when the markets open at 8 a.m. or**  
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**at least, say, one minute before the markets open, 7:59 a.m., would you know what the open equity positions were, correct?**

A. Yes.

**Q. And you would know this just by looking at the OCC statement?**

A. You know the net, yes.

**Q. Right. You --**

A. You don't know an individual customer's position.

**Q. It is not a spreadsheet of thousands and thousands of pages, correct?**

A. No. It is the net number the OCC is calling that member.

**Q. And again, just so we are clear, looking at that report, you would know the exchange minimum margin that the OCC has requested or requires?**

A. Yes.

MS. BLOOMER: Objection to form.

**Q. Correct?**

A. Yes.

**Q. And you would know whether or not there was collateral posted that was greater**  
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**than that minimum requirement, correct?**

A. Yes.

**Q. Would you use that report, Ms. James, to assess the risk inherent in holding those positions?**

A. No.

MS. BLOOMER: Objection to form. Would she or did she?

**Q. I think it is would.**

A. No.

**Q. Why not?**

A. Because it doesn't give you the details of the trade. Without the details of the trades, you have got no idea.

**Q. Looking at the OCC's statement before the markets open on September 22, would you be able to assess the risk in assuming those positions -- withdrawn.**

**Looking at the OCC statement on the morning of September 22, before the markets opened, that reflects the Friday night prices and the Friday night margin based on those prices, would you be able to assess the risk inherent in taking on those positions if the**  
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**intention was to liquidate those positions immediately?**

A. No.

**Q. Why not?**

A. Because the OCC reports don't give you the detail of the transactions.

**Q. If you liquidated all the positions held at the OCC on Monday morning, as soon as the markets opened, what would happen? Would the margin be applied to those positions?**

A. Yes. But we need to -- the issue is, if you were going to close those positions on the Monday morning, OK, you have to know what those positions are. You have to know exactly -- and I'm assuming we are talking more about the OCC options here, rather than the futures.

You have got to know those positions, you have got to know the history and the volatility of that product, and you have got to look at where it stands and what's the volatility behind it and whether you're looking at a balanced portfolio or a nonbalanced portfolio.  
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So to just say I'm going to close out all these positions on a Monday morning would not be the smartest move to do, let's be honest about this. And plus, you don't know what price you're going to get if you went into the market and closed them out.

The OCC position that Lehman had was a fairly large substantial position, as I've now seen it, OK. If you had gone into the market on Monday morning and closed all of those positions out, there would have been absolute havoc in the market.

**Q. Why would there have been havoc in the market?**

A. Because of the size of the positions that you're attempting to close out. Yeah. So the volume of the positions, the risk associated. You would have moved the market price substantially if you had attempted to close all of those positions in one go. The risk associated with that is just -- I wouldn't even want to go there.

Would there have been enough margin to cover? Yeah, I'm not convinced there would have

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been.

**Q. Why not?**

A. Due to the size of their positions they had on. And, you know, actually in the deposition of, I think it was Craig Jones -- MS. BLOOMER: Declaration?

A. Declaration, I'm sorry. I muddle the two together.

The Craig Jones who is the Treasury guy for the OCC, it actually states, the OCC actually would not allow Lehman to take back money on the Friday. They gave them -- they gave them an extra call, margin call on Friday due to the positions they had on and the volatility in the market.

**Q. When did Barclays first learn that?**

A. When did we learn --

**Q. About the additional margin call that you were just talking about.**

A. I don't know when Barclays learned about it. I only learned about it from actually Craig's declaration. Because that would have been proprietary information to Lehman.

**Q. In your experience, Ms. James, is that**

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a typical way for -- withdrawn.

**How typically are margin calls made in or at the OCC?**

MS. BLOOMER: Objection, foundation.

A. Daily.

**Q. How are they communicated to the member?**

A. It depends on how the member wishes to have them. The OCC has an online system that you can actually go on and look the number up. They will sometimes call you and sometimes they will do it by e-mail.

I don't know Lehman's process.

**Q. In terms of the OCC, if the OCC makes an additional margin call intraday, do you have any understanding as to whether or not that is reflected in the OCC's books and records?**

A. I'm actually not sure, I'll be honest. I don't know.

**Q. So you don't know -- if you got a margin call during the day, you don't know whether or not by the end of the day Lehman -- I am sorry, the OCC's books and records will be updated to reflect that?**

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A. They will be updated to reflect the money if you had to wire more money in or if you had to put in more securities. But if it was money that was already there that they are not allowing you to take out, then it hasn't changed. So it depends on --

**Q. Well, I'm not sure I quite understand that. I thought you said there was an additional margin call made to Lehman on Friday, the 19th of September?**

A. Right. And if you read Craig's declaration, what he says is, they went to withdraw money on Friday from the OCC, which was a requirement above and beyond the initial requirement they had there, so they chose to pull it back into their normal, regular bank account, I'm assuming to satisfy other requirements.

When they called that money back, the OCC said no, and the OCC said no, we are keeping that money as an additional requirement.

**Q. And would you expect the OCC to update their books and records to reflect that?**

MS. BLOOMER: Objection, foundation.

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A. No. No, because they haven't changed anything. There is nothing for the OCC to reflect.

Q. I understand that you are not an OCC expert. It is -- futures is your area of expertise, not the OCC.

Have you ever heard of a margin call being made in the manner that you have just described?

A. Yes.

Q. Under what circumstances?

A. Normally very extreme, volatile markets.

Q. That's happened to you in your tenure at Barclays?

A. No. Previous company.

Q. Where did it happen?

A. ABN AMRO.

Q. And that's prior to your employment with Barclays that began in 2001?

A. Yup.

Q. Can you give me a year of when this call happened?

A. Year 2000.

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Q. Could we return to your declaration, which is 535-A.

A. Yup.

Q. Could you turn to page or paragraph 9.

MS. BLOOMER: Can we just pause for one minute so I can run back and get my copies of this exhibit.

MR. OXFORD: Yeah, sure.

MS. BLOOMER: Thanks.

(Recess)

Q. Ms. James, you have your declaration in front of you?

A. I do, yeah.

Q. Looking at paragraph 9, you see that it says as of closing, LBI held in open -- LBI held open LBI futures in account number 084F at the OCC. Do you see that?

A. Yes.

Q. And do you know, sitting here today, what the total open equity was in that account?

A. No.

Q. Have you ever known that answer?

A. No, I don't think I have.

Q. If you were to calculate the total

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open equity in that account, can you tell me how you would go about that?

MS. BLOOMER: Objection, vague as to time frame.

A. Are we talking as of the day we took over? So September 22?

Q. My question is not particularly bounded by time, but you can pick that day if you like if that's helpful.

A. So we would have taken the positions in the account, identified what the positions were, the prices that they were originally traded at and marked them versus the closing price on the day that we are looking to mark them to and that would give you the current value for that day.

Q. And if you wanted to figure out the total open equity as of Monday morning before the markets close on the 22nd of September, how would you do that? Would that change your answer?

MS. BLOOMER: Objection.

A. Yeah.

Q. OK, can you tell me under that

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scenario you would go about determining that?

A. Well, what you would have to do is take the trades that you have on. You are then going to have to go look at a screen, a trading screen to see where is the current value which of course is constantly moving and try and price.

Q. I don't mean to interrupt. My question was before the markets open on Monday morning.

A. Sorry, then it would be -- you can only value it based on the closing price of the previous night.

Q. That closing price, if I understand your previous testimony correctly, would be available in a summary OCC report?

A. Yes.

MS. BLOOMER: Objection to form.

Q. Is that correct?

A. Yes.

Q. If you could have in front of you just briefly Mr. Romain's notes again.

A. These?

Q. These are marked as Exhibit 534A. We

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<p>1 JAMES</p> <p>2 of lots. There was a number on it, but there</p> <p>3 was no designation if that was actually a value</p> <p>4 or not. And there was no separation between it</p> <p>5 being client, house, or affiliate.</p> <p>6 So was something sent to Barclays,</p> <p>7 yes. Could Barclays actually take from that</p> <p>8 what they were getting? No.</p> <p>9 (Exhibit 554, e-mail dated 9/19/2008</p> <p>10 with attachment marked for identification,</p> <p>11 as of this date.)</p> <p>12 <b>Q. Ms. James, I have handed you what I</b></p> <p>13 <b>have marked as Exhibit 554 which I will identify</b></p> <p>14 <b>for the record as an unBates-stamped e-mail from</b></p> <p>15 <b>Christopher Mincak, M-I-N-C-A-K, to Stephen King</b></p> <p>16 <b>and others at Barclays on Friday, 19th of</b></p> <p>17 <b>September, 2008 at 4:445 p.m.?</b></p> <p>18 MS. BLOOMER: Note for the record that</p> <p>19 I believe we did provide you the Bates</p> <p>20 numbers for this even though it doesn't</p> <p>21 appear on this, in an e-mail last night.</p> <p>22 <b>Q. OK. Can you take a moment to look at</b></p> <p>23 <b>Exhibit 554 and can you tell me if that is the</b></p> <p>24 <b>report to which you refer in your notes that you</b></p> <p>25 <b>just testified about.?</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 MS. BLOOMER: Objection, vague. I</p> <p>3 believe she refers to more than one report.</p> <p>4 A. Yes, but I certainly didn't see all of</p> <p>5 this.</p> <p>6 <b>Q. When you say you never saw all of it,</b></p> <p>7 <b>can you explain?</b></p> <p>8 A. I think, I think the report I was</p> <p>9 originally shown, there was like 25 pages.</p> <p>10 Not -- not a brick.</p> <p>11 <b>Q. And who showed you the report, the 25</b></p> <p>12 <b>page version of the report, Ms. James? Was that</b></p> <p>13 <b>Mr. King?</b></p> <p>14 A. Yeah.</p> <p>15 <b>Q. So is it your testimony that you have</b></p> <p>16 <b>seen 25 pages of this --</b></p> <p>17 A. Yes.</p> <p>18 <b>Q. -- e-mail and the attachment?</b></p> <p>19 A. Yes.</p> <p>20 <b>Q. But you haven't seen the whole thing?</b></p> <p>21 A. Correct.</p> <p>22 <b>Q. It is your testimony that Mr. King did</b></p> <p>23 <b>not show you that at the time?</b></p> <p>24 A. Correct.</p> <p>25 <b>Q. Without taking the requisite hours to</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 JAMES</p> <p>2 go through line by line, could you tell me</p> <p>3 whether the full report that I have placed in</p> <p>4 front of you and marked as Exhibit 554 contains</p> <p>5 more information and specifically more useful</p> <p>6 information in determining the value of LBI's</p> <p>7 open positions at the OCC than the report that</p> <p>8 Mr. King showed you on Sunday the 21st of</p> <p>9 September.</p> <p>10 A. No, it doesn't.</p> <p>11 <b>Q. Why is that?</b></p> <p>12 A. There is no lots. There is no</p> <p>13 designation of house and customer. Or firm or</p> <p>14 affiliate. There is no designation. It doesn't</p> <p>15 tell you who these positions belong to. It</p> <p>16 doesn't give you the number of lots.</p> <p>17 <b>Q. OK, do you know whether Barclays asked</b></p> <p>18 <b>for the information about lots, clear value,</b></p> <p>19 <b>client and house positions that you say is</b></p> <p>20 <b>missing from this report?</b></p> <p>21 A. I don't know.</p> <p>22 <b>Q. And you don't know because you weren't</b></p> <p>23 <b>part of the deal team?</b></p> <p>24 A. Correct.</p> <p>25 <b>Q. And you have never learned that fact</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 subsequently?</p> <p>3 A. No.</p> <p>4 <b>Q. Did Barclays have any in-house options</b></p> <p>5 <b>experts at the time of the closing?</b></p> <p>6 A. I don't know to be honest.</p> <p>7 (Exhibit 555, document Bates stamped</p> <p>8 BCI-EX-(S) 188225 through 270 marked for</p> <p>9 identification, as of this date.)</p> <p>10 <b>Q. Thank you, Ms. James. I have handed</b></p> <p>11 <b>you a document that is marked as Exhibit 555. I</b></p> <p>12 <b>believe it has actually been marked as 394B.</b></p> <p>13 <b>But I'm not 100 percent, so I marked it again.</b></p> <p>14 <b>I will identify this for the record as -- sorry,</b></p> <p>15 <b>this has not been previously marked as 394B.</b></p> <p>16 <b>I will identify it for the record as</b></p> <p>17 <b>an e-mail bearing the Bates range BCI-EX-(S)</b></p> <p>18 <b>00188225 and it is from Frank Pearn to Tim Stack</b></p> <p>19 <b>and others. September 21, 2008. Have you seen</b></p> <p>20 <b>this document before?</b></p> <p>21 A. Yes.</p> <p>22 <b>Q. Tell me the circumstances in which you</b></p> <p>23 <b>have seen it, please.?</b></p> <p>24 MS. BLOOMER: Objection to the extent</p> <p>25 you can answer without revealing privileged</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

1 JAMES  
2 information.  
3 A. I saw it on Sunday, September 21st.  
4 Q. Tell me the circumstances under which  
5 you first saw this e-mail sent September 21.  
6 A. This was given to me and asked if I  
7 could explain how to read the report.  
8 Q. Given to you by Mr. King?  
9 A. By Mr. Stack.  
10 Q. What did you tell Mr. Stack when he  
11 asked you if you could read the report?  
12 A. I said yes. And I told him how to  
13 read it.  
14 Q. And how is it that you were able to  
15 read this report? Have you seen reports like  
16 this before?  
17 A. Yes.  
18 Q. Under what circumstances had you seen  
19 reports like this before?  
20 A. This is a report from the OCC. It is  
21 the same report they use for their futures as  
22 well as for their equity options. It is a  
23 standard format. You read it in the same way.  
24 Q. If you could direct your attention to  
25 your notes, page 1 for a moment. You reference  
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1 JAMES  
2 Q. Can you tell me where on the report  
3 that that 2.1 billion dollars comes from?  
4 A. OK, so if you go past the second blue  
5 divider and the very first page --  
6 Q. Do you have a Bates number, that's the  
7 number that appears at the --  
8 A. Yes, so BCI-EX-(S) 00188255.  
9 Q. And what you have done to get that 2.1  
10 billion dollars is total the three entries that  
11 appear under the column "face value"?  
12 A. That's correct.  
13 Q. What does that 2.1 billion dollars  
14 represent, Ms. James?  
15 A. As per the breakdown, it is a letter  
16 of credit, it's cash, and it's government  
17 securities that Lehman had with the OCC for  
18 their trading.  
19 Q. Posted as margin by the -- by Lehman  
20 with the OCC?  
21 MS. BLOOMER: Objection to form.  
22 A. Yes.  
23 Q. Is part of that also clearing fund to  
24 your knowledge?  
25 A. I actually don't know. It doesn't  
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1 JAMES  
2 in 9/21, 4:07 p.m. e-mail saying e-mail to Tim  
3 with OCC reports reflecting 9/19 and 9/22  
4 reports?  
5 A. That's this.  
6 Q. In case there is any confusion in the  
7 record, the time stamp on the document marked as  
8 555 is in Greenwich mean time. It says 8:07  
9 p.m. as opposed to the 4:07 p.m. in your notes?  
10 A. Yeah, that's probably right.  
11 Q. And is it fair to say, Ms. James, that  
12 the information that appears in bullet point  
13 form below the line we have just read, first of  
14 all, report reflecting 9/19 date showed a total  
15 of 2,148 -- I am sorry, 2,148,180,547.47. That  
16 figure is drawn from your analysis of this  
17 report, correct?  
18 A. Correct.  
19 Q. And it is a total of what, Ms. James?  
20 A. If you actually --  
21 MS. BLOOMER: You're asking about the  
22 9/19 entry on her notes?  
23 MR. OXFORD: Yes, the one that I just  
24 read.  
25 BY MS. BLOOMER:  
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1 JAMES  
2 say. So I wouldn't actually know.  
3 Q. And for whose options, has Lehman, in  
4 this report, posted this collateral?  
5 A. It doesn't tell you.  
6 Q. Is that information available anywhere  
7 in this report?  
8 A. No.  
9 Q. Is it -- does this report break down  
10 the collateral that's posted in categories,  
11 whether they are posted for customer positions,  
12 firm positions, et cetera?  
13 A. For the report, this report dated  
14 9/19, no, it does not.  
15 Q. So I take from your answer, you have  
16 seen another report that does break it down like  
17 that? Is that correct?  
18 A. (Indicating). The next day.  
19 Q. Can you indicate by Bates range?  
20 A. So it is BCI-EX-(S) 00188233 through  
21 to BCI-EX-(S) 00188254.  
22 Q. Which exhibit number are you looking  
23 at?  
24 A. 555.  
25 Q. I see, it is attached to the same  
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<p>1 JAMES 2 e-mail? 3 A. Yes. 4 MS. BLOOMER: Whenever you reach a 5 good time for a break, we would like to take 6 a break. 7 MR. OXFORD: We can take a break just 8 now. 9 (Recess) 10 Q. Directing your attention to Bates 11 number 18233 of Exhibit 255. It is the page I 12 think we were looking at just before the break. 13 And it appears to reflect that in the OCC 14 account 074C, collateral of a total of 507 15 million and change was posted by Lehman, is that 16 correct? 17 A. Correct. 18 Q. You read the report the same way as I 19 do? 20 A. Yes. 21 Q. In fact, that number is reflected at 22 the bottom of your chart at the bottom of page 1 23 of your notes, isn't it? 24 A. Correct. Yes. 25 Q. And I think I have this, but I just TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES 2 want to make sure that I understand it, Lehman 3 posted that collateral with the OCC to secure 4 options placed on behalf of customers, correct? 5 A. Correct. 6 Q. And do you know whether or not 7 Lehman's customers also -- to secure Lehman's 8 obligation to the exchange or the posting of 9 this collateral -- also provided Lehman with 10 collateral? 11 MS. BLOOMER: Objection beyond the 12 scope of the 30(b)(6). 13 (Record read) 14 A. I don't, but I'm actually going to do 15 a but, and say in Craig Jones' declaration, he 16 actually states that the money posted at the OCC 17 for all of the business was Lehman's money. 18 Q. Right, I understand that. I 19 appreciate that clarification. Your testimony 20 is the same as Mr. Jones' testimony, right? 21 A. Yes. 22 Q. You don't disagree that the 2.1 23 billion dollars that you have identified as 24 being reflected as posted by Lehman at the OCC 25 in this report Exhibit 555 -- you don't dispute TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 JAMES 2 that that's Lehman's money? 3 A. No. 4 Q. That Lehman, at least insofar as this 5 account 074C, posted to secure the obligations 6 that relate to Lehman's customers options, 7 correct? 8 A. Correct. 9 Q. My question is a little different. To 10 secure or in return for the posting of this 11 margin, this 507 million dollars in account 12 074C, do you know whether Lehman obtained 13 collateral from customers? 14 MS. BLOOMER: I object to the form of 15 the question. I would also object that this 16 is beyond the scope of this witness' 17 testimony today. 18 A. And I am going to have to say I don't 19 know, because I honestly don't. 20 Q. Who would you ask if you wanted to 21 know the answer to that question? 22 A. This is equity options. I would ask 23 somebody in the Lehman -- probably be their PB 24 world, prime brokerage world. 25 Q. Do you believe Mr. Jones would know TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES 2 the answer? 3 A. He may do. I don't know. 4 Q. What about Mr. Dziemian? 5 A. I'm not sure. 6 Q. If I could direct your attention to 7 the second page of your notes, Ms. James. There 8 is a reference again 9/21, 4:07 p.m. Do you see 9 that, a little more than halfway down? 10 A. Yes. 11 Q. Tim receives an OCC group board 12 activity date 9/22/08? Do you see that? 13 A. Yes. 14 Q. And that reports excess across all 15 accounts of 689 million dollars, correct? 16 A. Yes. 17 Q. When was the first time that you saw 18 the report that you are referencing? 19 A. Sunday, Sunday the 21st of September. 20 Q. Did Mr. Stack give you that? 21 A. Yes, he did. 22 Q. Go off for one second. 23 (Pause) 24 Q. Is that activity the report, the OCC 25 report? TSG Reporting - Worldwide 877-702-9580</p>



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MS. BLOOMER: Objection, foundation.

**Q. Is the OCC report that you have referred to Mr. Stack receiving at 4:07 p.m. on the 21st, is that Exhibit 555?**

A. Yes.

**Q. It is?**

A. Yes.

**Q. And you note below that this exhibit shows EXC across all accounts of 689 million dollars, correct?**

A. Yes.

**Q. Can you explain to me what that means?**

A. From the exchange reports, there is actually a line here that gives you a number with EXC.

**Q. And EXC refers to excess?**

A. Yes.

MS. BLOOMER: Objection, foundation.

**Q. And what do you understand excess to mean in this context?**

A. In this particular context?

**Q. Yes, the context of this report?**

A. Right. And in this particular side of the report, because you have to be very

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specific, yeah, that means that is money that was placed -- actually money, collateral or LCs that were at the OCC to cover the initial margin requirement. And that's above and beyond the requirement required by the exchange.

**Q. OK. What do you explain to -- withdrawn.**

**Did Mr. Stack ask you to interpret this report?**

A. Yes.

**Q. And what did you tell him in response to that request?**

A. I explained what the numbers were.

**Q. And those are the numbers that you have in your 30(b)(6) notes breakdown by type Exhibit 552?**

A. Yes.

MS. BLOOMER: Objection to the form of the question. Are you asking whether she can recall now that these are the precise numbers that she explained to him then? Or are you asking her whether these numbers are the same numbers on the page?

MR. OXFORD: I think my question was  
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clear. I'm asking her what she told Mr. Stack.

A. This is what I told Mr. Stack.

**Q. The numbers that are on the page?**

A. Yes.

**Q. Thank you.**

MS. BLOOMER: The numbers that are on which page? I just want to be clear. I'm not clear.

**Q. The numbers on the page --**

MS. BLOOMER: The numbers on the page, this page of this report, page Bates numbered 233?

THE WITNESS: Yes.

MS. BLOOMER: So these particular numbers you told him?

THE WITNESS: Yes.

MS. BLOOMER: OK. Sorry.

**Q. That section of the report that starts at 233, do you see that?**

A. Yes.

**Q. Do you see that that report goes on for a number of pages through Bates range 254?**

A. Yup.

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**Q. And did you discuss with Mr. Stack all of the numbers on this page?**

A. Yes.

**Q. These pages between the two Bates ranges?**

MS. BLOOMER: Please specify which page you are talking about when you asking the questions.

**Q. Between Bates range 188233 and 188254.**

A. Yes.

**Q. And those numbers are which are excess margin and various accounts at the OCC are also reflected under breakdown by type on page 2 of your notes, Exhibit 552, correct?**

A. That's correct.

**Q. Do you remember anything else about the discussion with Mr. Stack on the 21st?**

A. No.

**Q. What did he say when you gave him this information?**

A. He said OK. Knowing Tim.

**Q. Do you know -- you will see, directing your attention to 188233, do you see the report has an activity date at the top? Do you see**

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that?

A. Yes.

Q. That's 9/22/2008.

A. Yes.

Q. Do you have any understanding of why the activity date on this report was 9/22?

A. It was because it was an option weekend, expiry weekend.

Q. Can you explain that a little further?

A. The third Friday of every month, and especially on the quarter months, is a main option expiry weekend. So the options go off over that weekend. They actually are either exercised or assigned. The weekend of 19th, 21, 20 was an option expiry weekend.

So the OCC puts out reports on the morning of the Saturday morning which are the regular calls, and then they would do the option exercises and reassignments and issue you a new set of numbers.

Q. Does this report fall into the latter category, the new set of numbers that you are talking about?

MS. BLOOMER: Objection, no  
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foundation.

A. Yes, it does.

Q. And the system date that you see just below the activity date, do you see that?

A. Um-hm.

Q. That system date is 9/20/2008?

A. Yes.

Q. Do you have an understanding of why the system date is different from the activity date?

MS. BLOOMER: Objection, no foundation.

A. I believe, it's how the OCC dates their reports.

Q. OK. I think this is clear from your prior testimony, but just to be sure, is it your understanding, Ms. James, that this report reflects the Friday mark-to-market close prices in the OCC system?

MS. BLOOMER: Objection, mischaracterizes her testimony.

A. No.

Q. Why not?

A. What I don't know is once they have  
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done the option exercises and assignments, is whether they revalue. That, I don't know.

Q. Can you explain a little further what do you mean about the option exercises and assignments?

A. When you book off an option exercise or assignment, you are taking it out of being a position. So it is no longer an open position. You are actually taking it off the books and there is a value that goes with that.

What I don't know is if they use the closing prices of Friday night or if they use the closing prices that have been determined for the exercise and assignment process.

Q. Do you have an understanding of how they -- they being the OCC -- determine the closing prices for the exercise and assignment process?

MS. BLOOMER: Objection, no foundation.

A. No, I don't.

Q. So you told Mr. Stack, when he asked you to interpret this report, that this showed that Lehman, as of the date of this report, had

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an excess of collateral at the OCC of close to 700 million dollars, correct?

MS. BLOOMER: Objection to the form of the question. I don't think she has ever said that she told Mr. Stack that number in particular.

A. Yeah. I told him these are the numbers on the report and how to read them.

Q. Did you add it up for Mr. Stack?

A. I don't remember, to be honest.

Q. You don't remember giving him a total?

A. I may have done.

Q. I think we covered this earlier.

Below the list of numbers, you write, "subsequent knowledge, 9/19/OCC late margin call"?

A. Yes.

Q. As a 30(b)(6) witness for Barclays, are you able to tell me when Barclays first learned about the late margin call that you have testified about earlier?

A. I think within the first two to three weeks after September 22.

Q. But that Barclays did not know to your

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knowledge, and as the 30(b)(6) witness, about that late margin call until after closing, correct?

A. Correct.

Q. Again, as the 30(b)(6) witness for Barclays, what was Barclays' knowledge of the excess in margin posted at the OCC by Lehman as of the closing of the deal?

MS. BLOOMER: Objection to the use of the term "excess."

A. Can we just clarify what do you mean?

Q. Right. Sure. And I do want to be very clear on this. Your notes reflect, and I think your testimony reflects, that Exhibit 555 which you reviewed with Mr. Stack --

A. Yup.

Q. -- the Sunday before the deal closed --

A. Yes.

Q. -- shows an excess across all Lehman accounts at OCC --

A. Yes.

Q. -- of over 689 million dollars?

A. Yup, that's the -- yes.

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Q. As Barclays 30(b)(6) witness, what was Barclays' knowledge of the excess --

A. The knowledge was --

Q. Let me finish that.

A. Sorry.

Q. -- of the excess collateral that Lehman had posted at the OCC over and above the margin requirements of the OCC as at the closing of the deal before the markets opened on September 22, 2008?

A. So I -- on the Sunday 21st, when we received this report.

Q. Or 7:59 a.m. before the markets opened?

A. The only information we had is these were the numbers at the OCC that had been provided. We did not know at that time whether the customers had paid the funds, who the collateral and the excess belonged to. Subsequent to that, based on Craig Jones' testimony, we had found out it was all LBI money. But at that time on Sunday 21st, we did not know.

We did not know what the positions

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were. We didn't know the breakdown, we didn't know the volatility of any of those positions that were on on the Sunday.

Q. You didn't know the breakdown of what?

A. The positions.

Q. The underlying option positions that might be long and short Barclays had no information?

A. Correct.

Q. Did Barclays ask for information about that prior to closing?

A. I don't know.

MS. BLOOMER: Objection, beyond the scope of the 30(b)(6).

Q. We may have covered this earlier. If so, I apologize. Do you know whether or not Barclays posted additional margin in the OCC accounts that it assumed from Lehman in the week following the closing?

MS. BLOOMER: Objection, beyond the scope of the 30(b)(6).

A. I would certainly assume yes due to the volatility. I think the weeks following, we lost roughly 700 million dollars based on the

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positions that were there. So yes, they definitely would have posted.

Q. You lost 700 million dollars based on which positions?

A. The positions that were in the OCC account.

Q. Which OCC account? The proprietary ones or all of the them?

A. All of them. I mean, the volatility that week was horrendous.

Q. Well, I'm confused because I thought you told me earlier that the customers accept the gains and losses for any -- when an option is closed out and there is a gain or loss, that is not something that Barclays assumes responsibilities for; it is the customer's option, correct?

A. Correct. These weren't just customer though, these were house as well.

Q. I understand that. Maybe we are just talking past each other again. I thought you said Barclays lost 730 million dollars post closing on all of the OCC accounts.?

MS. BLOOMER: You can look at the

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HIGHLY CONFIDENTIAL - J. HRASKA  
UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

In Re:

Chapter 11

LEHMAN BROTHERS Case No. 08-13555(JMP)  
HOLDINGS, INC., et al., (Jointly Administered)

Debtors.

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\* \* \*HIGHLY CONFIDENTIAL\* \* \*

DEPOSITION OF JAMES HRASKA

New York, New York

August 14, 2009

Reported by:

KATHY S. KLEPFER, RMR, RPR, CRR, CLR

JOB NO. 24039

**HIGHLY CONFIDENTIAL - J. HRASKA**  
answer the questions.

On occasion, your counsel will state an objection or, you know, make some kind of objection for the record. That doesn't relieve you of the obligation to answer the question. It's just him trying to either correct a portion of my question or preserve an objection.

In that regard, throughout the day, I am undoubtedly going to misuse a word or some kind of acronym or some technical term that you folks use every day in your line of business which I'm not as familiar with as you are, obviously, so please correct me if I misuse a word or I ask a question that's misleading in any way or you just don't understand the question because I would like to ask a clear question so you can answer it.

Is that okay?

A. That's fine. Thank you.

MR. SHAW: Just before we begin, again, I want to put on the record our understanding that we will designate the entire transcript highly confidential and then we'll go back and redesignate.

**HIGHLY CONFIDENTIAL - J. HRASKA**  
about in the period of September 2008.

A. I was senior vice president from a corporate title perspective and I managed the Secured Financing Operations Group.

Q. And can you just describe for me what that means? What were your responsibilities and duties in that position?

A. The Financing Operations, also known as a financing middle office, is a group that sits between a bunch of groups, but primarily trading and sales individuals and clearance and settlements folks, and we do tasks such as, you know, monitoring positions, reconciling differences, dealing with, you know, customer, you know, concerns, bringing the attention of customers' concerns to either sales staff or trading staff.

We also deal with legal and compliance and regulatory on certain matters. If there are, you know, questions or queries as to the nature of the transactions, if somebody needs some technical expertise on, we usually provide that expertise as to the structure of the transactions and things like that.

**HIGHLY CONFIDENTIAL - J. HRASKA**

MR. HINE: Yes. That's true. That's fine.

Q. One other thing before we get started, Mr. Hraska. I imagine you're aware that you've been designated as what's called a 30(b)(6) witness by your employer, by Barclays, as to particular topics, and they relate to Schedules A and B which we'll discuss later. So when we get to that portion of the deposition, I'll let you know and we'll treat that portion as a 30(b)(6) deposition, but I'll let you know as we get there.

MR. SHAW: Just so we're, again, clear, Bill, as I think you know, he is one of several witnesses who's been designated as partially responsive to those particular topics.

MR. HINE: I understand.

Q. So, unless you have any questions, we can get started.

A. No, I'm fine.

Q. Okay. Can we just review briefly your employment history with Lehman? What was the last position you held at Lehman? I'm talking

**HIGHLY CONFIDENTIAL - J. HRASKA**

Q. And who did you report to in that position?

A. At Lehman Brothers at the time, I was reporting to Monty Forrest.

Q. Did you report directly to anyone else?

A. No, under that structure I was a direct report of Monty Forrest.

Q. And who were your direct reports?

A. My direct reports now or at the time?

Q. At the time in September of 2008.

A. Okay, my direct reports in the U.S. were Nancy Denig, D-E-N-I-G, and Paul Lindner.

Q. Prior to this position -- or, let me ask you another question. How long were you in this senior vice president position?

A. Approximately five to six years. I don't remember the exact date, actually. I don't remember the exact date when I got my senior vice presidency.

Q. Okay. How long had you been in the position of managing the secured financing?

A. It began in 2001, but it began in a much smaller scale. I only managed a portion of



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it and over time it grew into a larger and  
larger responsibility. At the point of  
September, I was managing both equity and fixed  
income. I was managing that globally as well.

**Q. Okay. When did you join Lehman?**

**A. August of '93.**

**Q. So you held this management position  
since 2001, you said?**

**A. That particular one related to  
Financing Operations since 2001, yes.**

**Q. What did you do before that at Lehman?**

**A. I did a host of different roles, all  
in derivatives-based. I worked in Derivative  
Settlements, I worked in Derivatives Middle  
Office, and I also worked in a Structured  
Products and Reinsurance Middle Office as well.**

**Q. Okay:**

**A. And over the period of time I also  
held management positions in those roles as  
well.**

**Q. When you say middle office, could you  
just tell me what that means?**

**A. Middle office is similar to the way I  
described it before for financing, only it was**

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for derivative-related products. So same types  
of trader inquiries, sales inquiries, customer  
resolutions to problems, things like that.

**Q. Did there come a point when you left  
Lehman and moved to Barclays?**

**A. Yeah, I mean after the -- after the  
declaration of bankruptcy, Barclays extended an  
offer of employment to me, which I accepted.**

**Q. Okay. And when did you start working  
for Barclays, do you recall the date?**

**A. I don't know, I can't for certain be  
given the official date. When I started, I was  
extended an employment contract, which I signed,  
and I believe I signed that sometime in October,  
but I don't know what the specific date that  
Barclays considers me an official employee  
versus when I stopped my Lehman employment.**

**Like I was never out of work for a  
period of time. I mean, I continued to show up  
every day. I'm just not sure what point in time  
they considered me officially a Barclays  
employee.**

**Q. I understand. When did you consider  
yourself to be working for Barclays?**

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**A. I mean, I guess I considered myself to  
be working for Barclays in the week after the  
declaration of bankruptcy.**

**Q. Okay. We're going to be talking about  
these weeks for the whole deposition, so the  
week of September 15 is the week you're  
referring to as the week where they declared  
bankruptcy; is that right?**

**A. The week is when -- September 15 is  
when Lehman declared bankruptcy. I wasn't  
completely confident that I was a Barclays  
employee until I guess the week of the 22nd,  
because I was still working, you know, with LBI  
in the U.S. broker-dealer, so I wasn't actually  
sure of my status at that point, to be  
completely honest.**

**Q. I understand. Okay. So that  
September 22 was a Monday, correct?**

**A. I believe so, yeah.**

**Q. Had you had any discussions with folks  
at Barclays prior to September 22 about the  
possibility of you going to work for Barclays?**

**A. No.**

**Q. When do you recall first speaking to**

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**anyone at Barclays about you becoming a Barclays  
employee?**

**A. I would say it was in that week of the  
22nd.**

**Q. Okay. Had you spoken to any folks at  
Lehman prior to September 22 about the  
possibility of you moving over and becoming a  
Barclays employee?**

**A. Well, wait. Could I just go back to  
that previous question?**

**Q. Sure.**

**A. When I spoke on that week of September  
22, like I had never had any employment  
conversations with a legacy Barclays employee.  
All my conversations were with legacy Lehman  
employees, so either my manager, which was Monty  
Forrest, or Alastair Blackwell.**

**So like nobody from like Barclays HR  
had approached me or had offered me any  
conversations prior to my conversations with my  
legacy Lehman managers. I don't know if that's  
important or not.**

**Q. No, I just want to make sure we're all  
on the same page here.**

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So when you say legacy Lehman managers, you're talking about people who were previously employed with Lehman who may now be employed with Barclays?

A. Yes.

Q. Okay. So am I correct to say that, prior to September 22, you had had no conversations with anyone who was -- who had always been a Barclays employee as to your possibility of you going over working for Barclays; is that right?

A. That's correct.

Q. So had you had conversations with legacy Lehman employees or people who were employed with Lehman at the time prior to September 22 about the possibility of you going to work for Barclays?

A. No.

Q. Okay. Do you recall any conversations with Mr. Forrest or anyone in your chain of command about the possibility of you going to work for Barclays?

MR. SHAW: Asked and answered.

A. No.

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Q. Okay. Before I forget, what is your current position at Barclays?

A. I am in a very similar role. Corporate title-wise I'm a director, which is equivalent to SVP. I manage, again, Secured Financing Operations for both equities globally and fixed income in North America.

Q. Is it fair to say your role is -- your duties and responsibilities are relatively the same as you had when you were at Lehman?

A. Responsibilities are reasonably the same, not quite as extensive as they were at Lehman from a global perspective.

Q. Who do you report directly to now?

A. I have a dual reporting line. From a product perspective, I still report to Monty Forrest. And Barclays is structured a little bit different, so from a regional perspective, I report to Alastair Blackwell.

Q. And who are your direct reports?

A. My direct reports now are still Nancy Denig, Paul Lindner, and a gentleman by the name of Henry Duarte, D-U-A-R-T-E.

Q. Okay. Anyone else?

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A. No. Not direct reports, no. (Exhibit 136B, a document bearing Bates Nos. BCI-EX-00077317 through 77319, marked for identification, as of this date.)

Q. Mr. Hraska, I apologize, I'm not trying to be intrusive here, but I need to ask you some questions about your compensation.

A. That's fine.

Q. So I'm handing you a copy of Exhibit 136B, which appears to be an agreement between yourself and Barclays dated September 22, 2008, and my question to you is, have you ever seen this document before?

MR. SHAW: Take a minute to look at as much of it as you need to.

A. Yes, I've seen this before.

Q. What is this document?

A. This was the document offering me employment at Barclays.

Q. Okay. And is this your current employment contract with Barclays?

A. It is, yes.

Q. Okay. Did you sign it on September 22?

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A. I don't believe so.

No, on October 2, when it's dated.

Q. Okay. Any understanding of why it's dated September 22, but you didn't sign it until October 2?

MR. SHAW: Foundation.

A. I have no idea. I mean, I'm -- I signed it September 22nd because that's when I decided to agree to the terms.

Q. Okay. Was there any negotiations between you and Barclays as to the compensation part of your employment?

A. No.

Q. Okay. How did it take place? Did they just give you a copy of this letter and ask you to sign it?

A. The letter was sent to me via interoffice mail.

Q. Uh-huh.

A. It was preceded by a phone call which said, you know, you're a key employee that we would like to retain, we're going to be sending you a letter for, you know, an offer to join Barclays. We would like you to review it and,

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MR. SHAW: If you know.

A. It was used -- it was to be used for anybody who would provide us secured financing. In the end, it ended up being the Fed, but --

**Q. Did you have any understanding during that weekend that there were discussions between Lehman and the Fed about providing financing?**

A. No, not specifically.

**Q. Okay. Let's just continue through the week briefly and then we'll come back to different topics.**

**On the Monday of the 15th, were you involved in any negotiations between Barclays concerning the sale transaction that ultimately took place between Barclays and Lehman?**

A. No.

**Q. Were you asked to provide any information to those who were involved in those negotiations?**

A. No.

**Q. Were you involved in negotiations with the Fed about the Fed financing that was provided during that week?**

A. No.

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**Q. Were you asked to provide information in support of that financing?**

A. No.

**Q. Okay. What did you do ultimately on that Monday, if you recall?**

A. A year ago?

**Q. Well, it's a big day. It's an eventful day in Lehman's history, correct?**

A. It is.

**Q. What do you recall doing the Monday when Lehman Holdings filed for bankruptcy?**

A. Well, I mean, I guess the first thing to do was, you know, talk to my manager and ask him, you know, kind of what our next steps were. Do we carry on as normal, do we do something different, or do we wait for further instructions or, you know, basically what do we do.

**Q. Okay.**

A. He advised me that we were going to carry on as normal. We were, at the time, we were still trying to preserve the liquidity and functioning of the broker-dealer, and as far as financing transactions, just to clarify, you

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know, our involvement was to find collateral and those -- that financing by the Fed that you referred to was -- those programs are open to every broker-dealer, and every broker-dealer at the time -- the market was in a very, you know, as you know, very turbulent situation -- every broker-dealer was taking advantage of those programs so it was normal course for us to figure out what assets we could finance with the Fed that potentially wouldn't be financeable with other counterparties.

And that was our focus that week, was to try to locate all the collateral that we had available to finance that the Fed would deem acceptable in their programs.

**Q. Okay. And so were you involved in the selection of the securities that were ultimately pledged to the Fed?**

A. I wasn't involved in the selection of what was pledged to the Fed. I was involved in identifying assets which were not encumbered and could be used as collateral to be pledged to the Fed.

**Q. Okay. And who actually selects which**

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**collateral was pledged to the Fed?**

A. The Fed programs are, at least the ones we used for financing, were tri-party transactions.

**Q. Right.**

A. And the actual selection criteria itself was done by the tri-party agent.

**Q. Who was that?**

A. JPChase. JPMorgan.

**Q. And can you describe for me your role, if any, in supporting the financing that was provided by the Fed?**

A. My role was to communicate between the -- between the trading desks and the tri-party operations groups and just coordinate, you know, the availability of collateral and the booking of the transactions which would ultimately represent that financing.

**Q. Okay.**

A. So the trading desk basically books the transaction onto a system. My group's role is to ensure that that booking makes it all the way through the front-end booking system all the way through to the system that is the books and

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records and what transmits that transaction to our tri-party agent and that there's no discrepancies, everything matches with what the traders know to have raised from a financing perspective.

And then we coordinate with the tri-party operations folks to make sure that there were no mechanical difficulties in the allocation that's performed by the tri-party agent, that there wasn't any shortfalls of collateral and things of that nature, and then report back to the trading desk.

**Q. Do you have any involvement in how that collateral is valued?**

A. No.

**Q. Who does that?**

A. The tri-party agent.

**Q. And that would be Chase?**

A. JPChase, yes.

**Q. Does Lehman --**

A. Going forward, should we just refer to it as Chase? Because I'm not sure JPMorgan Chase, JPChase.

**Q. That's fine. We'll use Chase as a**

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**Q. Okay. Would you be involved in that normally?**

A. No.

**Q. Okay. Before we go further on in that week, do you have any understanding of the actual sale transaction, the terms of the sale transaction between Lehman and Barclays?**

A. No, I don't.

**Q. Did you ever have a chance to look at what's known as the Asset Purchase Agreement?**

A. No, I didn't.

**Q. Did you ever have any understanding about the terms of the transaction whereby Lehman assets were going to be transferred to Chase -- I mean to Barclays?**

MR. SHAW: Objection to form.

A. At what point in time are you referring to?

**Q. Okay. Let's break it down. Early in the week, Monday, Tuesday?**

A. Of the week of the 15th?

**Q. Of the week of the 15th.**

**Did you have any understanding of the terms of the deal between Lehman and Barclays?**

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shorthand.

A. That's fine.

**Q. So, to your knowledge, with respect to that Fed financing of the week of September 15, Chase placed a value on the collateral that was used?**

A. That's correct.

**Q. Did Lehman place its own value on that collateral?**

MR. SHAW: Objection. Vague.

A. I don't know that -- Lehman, as a normal broker-dealer would have their own marks for collateral on their books and records.

**Q. Right.**

A. The final determinant of that collateral with respect to the financing transaction would be the responsibility of the tri-party agent.

**Q. Okay. And do you know if there's any -- were there any differences in the valuations that Lehman would -- placed on that collateral versus what Chase placed on that collateral during that week?**

A. I don't know.

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A. I did not.

**Q. Did you have any understanding that the Asset Purchase Agreement called for the sale of \$70 billion in long positions to Barclays?**

A. I did not.

**Q. Had you ever heard that phrase used?**

A. No. That number is a completely new number to anything I've had heard.

**Q. You never heard that number during that week?**

A. During -- to this day.

**Q. Okay. I'm just trying to get a sense of what you were involved in.**

A. That's fine.

**Q. Had you ever heard during that week that the transaction involved the transfer of \$69 billion in short positions to Barclays?**

A. No.

**Q. Okay. Going further on in the week, did there come a time when you learned some of the terms of the transaction between Lehman and Barclays?**

A. During that week, no.

**Q. After moving to Barclays, have you**



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1 learned some of the terms of the transaction  
2 between Lehman and Barclays?  
3

4 A. At a much later time, yes.

5 **Q. What have you learned about it?**

6 A. I learned that Barclays has purchased  
7 the unencumbered assets -- the way I understand  
8 it is they purchased the unencumbered assets of  
9 Lehman Brothers' clearance boxes.

10 **Q. Anything else that Barclays purchased?**

11 A. The building at 745.

12 **Q. Anything else?**

13 A. No.

14 **Q. When you say "unencumbered assets,"**  
15 **what do you mean by that?**

16 A. An unencumbered asset, from my  
17 perspective, as an operations professional, is  
18 an asset which does not have a lien on it by any  
19 other party, primarily customers.

20 **Q. And when you say "in the clearance**  
21 **boxes," what are you referring to?**

22 A. Clearance boxes are -- it's a loose  
23 term that can be defined in two ways: A  
24 clearance box can be a location at a depository  
25 institution, such as DTC, or it can be a

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1 clearance or -- a location at a clearing bank,  
2 such as a JPChase or Bank of New York, or it can  
3 refer to the record of your having those  
4 accounts on your stock records. So basically  
5 your stock record represents your position of  
6 those locations at those outside agents. So  
7 it's used intermittently, depending upon the use  
8 or the person using it.

9 **Q. And what is your understanding of the**  
10 **amount or the value of the assets that were**  
11 **transferred from Lehman to Barclays?**

12 MR. SHAW: Objection. Just for  
13 clarification, do you mean as unencumbered  
14 assets or overall?

15 MR. HINE: Whatever assets he thinks.

16 **Q. Let me clarify that. Let's take out**  
17 **the real estate.**

18 A. Okay.

19 **Q. What is your understanding of the**  
20 **value of the assets other than the real estate**  
21 **that were transferred from Lehman to Barclays?**

22 A. At what point in time?

23 **Q. Now.**

24 A. As of today?

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1 **Q. Yes.**

2 A. As of today, my understanding is that  
3 the value of unencumbered collateral that was  
4 transferred was approximately 1.4 billion.

5 **Q. Have you heard the term "Schedule B"?**

6 A. I have, yes.

7 **Q. And what is your understanding of what**  
8 **that is?**

9 A. Schedule B, to my understanding, is  
10 the schedule of assets which were part of the  
11 transaction between Barclays and Lehman  
12 Brothers.

13 **Q. And is the 1.4 billion that you just**  
14 **mentioned, is that the approximate amount of the**  
15 **assets on Schedule B?**

16 A. The 1.4 -- the short answer is I don't  
17 know.

18 **Q. Okay.**

19 A. You had asked me what had been  
20 transferred to date. So what had been  
21 transferred is approximately 1.4.

22 **Q. Okay. Are you drawing a distinction**  
23 **between transferred and some other -- other --**

24 A. Originally, yes, because you

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1 originally asked what had been transferred.

2 **Q. Right.**

3 A. And based on, you know, transactions,  
4 1.4 or so billion had been transferred.

5 **Q. Right.**

6 A. There may have been a different total  
7 value on Schedule B. I can't be certain what  
8 that value is. There's been people who have  
9 talked about a number.

10 **Q. Okay.**

11 A. So I have a general sense, but I  
12 wouldn't testify that I knew a hundred percent  
13 what that value of Schedule B was.

14 **Q. Do you have any knowledge of what has**  
15 **been called Schedule A with respect to that**  
16 **transaction?**

17 A. Schedule A, as I understood it, was  
18 related to a transaction prior to that  
19 transaction which was the financing between  
20 Lehman Brothers and Barclays.

21 **Q. Okay. And do you have any --**

22 A. I'm not sure, is it all part of the  
23 same transaction? I don't know that it's part.  
24 I view those as distinctly different



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transactions, Schedule A and what became  
Schedule B, but...

Q. Okay. Well, I just want to understand  
what your understanding is.

A. Okay.

Q. So let me just try to understand. You  
mentioned a separate transaction between  
Barclays and Lehman that eventually led to a  
collection of securities that has been known as  
Schedule A; is that right?

A. That's correct.

Q. Okay. And what was the transaction  
that you understood took place that led to  
Schedule A?

A. There was a secured financing  
transaction, a repo transaction -- from Lehman's  
perspective, it was a repo transaction with  
Barclays which took place on the 18th of  
September, and the assets related to that  
transaction became Schedule A.

Q. Okay. And is it all right -- was that  
a tri-party repo?

A. That transaction was a -- was a repo.  
There were -- it was sort of a unique

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transaction. It was one that took on elements  
of tri-party as well as a bilateral contract,  
but it was governed under the documents of a  
tri-party repo, yes.

Q. And who is the agent with respect to  
that transaction?

A. There was -- well, that's what made it  
unique. There were two tri-party agents  
involved. There was Chase, who was a tri-party  
agent, who held our collateral with the Fed that  
we had pledged to the Federal Reserve, and then,  
in effecting the transaction, according to the  
tri-party terms, there was Bank of New York, who  
was the agent for Barclays.

Q. I see reference in some of the  
documents to the BONY tri-party?

A. Uh-huh.

Q. Is that the tri-party we're -- is that  
the transaction we're talking about?

A. Yes, that's correct. We moved the  
assets from JPChase, who was our tri-party  
agent, to Bank of New York, who was, as I  
mentioned, Barclays' agent.

Q. Just so I understand the sequence,

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tell me if I'm wrong here. There was a  
financing with the Fed in which there was a  
certain amount of collateral posted by Lehman,  
correct?

A. That's correct.

Q. At some point in time, that collateral  
gets transferred to Chase? Withdrawn. Let me  
start again.

At some point in time that collateral  
gets transferred to Bank of New York in  
connection with this transaction you have just  
described?

A. That's correct.

Q. Okay. And were you involved in that  
transfer of collateral from the Fed program to  
Bank of New York?

A. I was, yes.

Q. You were, okay. And did all the  
collateral make it from the Fed program to the  
Bank of New York?

A. It did not.

Q. And do you know -- do you recall how  
much made it and how much didn't?

A. I can't give you the figure of exactly

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how much that was in the Fed program made it to  
Barclays of the original collateral because  
there were difficulties in the collateral all  
moving over to Barclays.

I can tell you how much collateral,  
approximately, made it to Barclays, but it  
wouldn't necessarily be all of the same  
collateral that was with the Fed.

Q. Okay. Did you mean to say Bank of New  
York or Barclays?

A. Well, it was to Barclays -- I'm sorry,  
to the Bank of New York for the benefit of  
Barclays.

Q. Okay. So how much made it to the Bank  
of New York in connection with that transfer  
from the Fed program?

A. On the night of the 18th,  
approximately \$42 billion worth of collateral.

Q. And that figure is based on a  
valuation of the collateral provided by who?

A. By Bank of New York.

Q. So \$42 billion is how Bank of New York  
valued the amount of money -- the amount of  
collateral that was transferred from the Fed

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Q. So when you add up all these assets that were eventually made their way to Barclays, do you have a number that would reflect the value of those assets?

A. I don't know what the value of those assets are today. I know that there was a value assigned to the assets on the night of the 18th for what made it, which were -- what was \$42 billion. My approximate evaluation of what was subsequently transferred was about 1.4 billion of physically moving from Lehman to Barclays.

So those are the two figures that I'm reasonably comfortable with. And the market valuation of those things has been changing over time, being that it's a year later and things like that.

Q. I just want to get a -- just so I understand your perspective on this, from your perspective, there was \$42 billion moved to Bank of New York which eventually makes its way to Barclays, correct?

A. That's correct.

Q. And there's a separate amount of 1.4 billion which is gathered sometime late in the

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week and that eventually makes it to Barclays as well, correct?

A. That's correct.

Q. And is the 1.4 billion what's called Schedule B?

A. The 1.4 --

MR. SHAW: Objection. Asked and answered. Mischaracterizes prior testimony.

MR. HINE: I didn't say anything about his prior testimony.

Q. I'm just trying to figure out, do you consider the 1.4 billion the assets that are on Schedule B?

A. I have subsequently learned that the 1.4 billion are assets that are on Schedule B, yes.

Q. And were you involved in preparing Schedule B?

A. I was not involved in preparing the official Schedule B. I provided assets which were used as the securities that would be later selected and placed on Schedule B, but I didn't prepare the official Schedule B.

Q. Who selected the assets ultimately

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that would become part of Schedule B?

A. I provided that information through my manager at the time. I don't recall whether I had sent it to Monty or to Alastair, but nonetheless, they forwarded it to Paolo Tonucci and I believe Paolo sort of crystallized the official Schedule B.

Q. Is it fair to say over that weekend your role was to just find unencumbered assets that they could possibly decide what to do with?

A. That's correct.

Q. Okay. Did you have an understanding of why you were doing that?

A. No.

Q. Did anyone tell you that there was any kind of shortfalls in what Barclays was expecting to receive at the end of that week?

A. My understanding at the time was that I was still trying to complete the repo transaction, and part of that repo transaction was we had placed cash as well as an asset to Barclays, and, you know, my understanding at the time was that I was looking to, in addition to -- I was looking for assets that would be

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able to be sent to Barclays for the purposes of also substituting that cash.

Q. When you say the repo transaction, are you talking about the September 18 transaction that we previously discussed?

A. Involving the Federal Reserve, yes.

Q. I think I just misunderstood you. The September 18 transaction was between Barclays, Lehman and BONY, right?

A. It was Barclays, Lehman and BONY, but it was -- well, yes, it was Lehman. It was basically like I guess a transaction where I guess the collateral that Lehman had on finance with the Fed was being -- instead now being financed with Barclays and Barclays was then I guess going to finance that transaction with the Fed. So that's why I referenced the Fed.

Q. Okay. When you said you were concerned with the repo at that time, what were you doing with respect to the repo? Again, I'm talking Friday of that week.

A. Friday of that week, I -- it was my understanding that we were looking to substitute the cash that we had placed on deposit for the

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benefit of Barclays with assets as opposed to leaving cash, because it's not efficient from a lending transaction to collateralize a cash loan with cash. So we were looking to find available assets which were suitable under the repo agreement to substitute.

**Q. How much cash are we talking about?**

A. On the night of the 18th, Lehman Brothers placed \$7 billion on deposit for the benefit of Barclays.

**Q. Just so I understand it, in layman's terms -- well, before I ask that, let me -- was that cash part of the \$42 billion that you mentioned?**

A. It was not. 42 billion was the value of the assets, physical securities, that had made it to Bank of New York for the benefit of Barclays.

**Q. And so there was \$7 billion in cash on top of that?**

A. Yes.

**Q. And so am I correct to say you were trying to locate other assets that could be transferred to Barclays so Lehman could keep the**

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**cash portion?**

A. So, yes, Lehman could get a return of the cash in lieu of assets. So a substitution of one asset for another.

**Q. And were you able to come up with any assets to do that?**

A. Yes, I was. On Friday.

**Q. How much?**

A. Approximately a billion, just a little over a billion. Something like a billion-34, -35, something along those lines.

**Q. Okay. And did those assets in fact get substituted in and make their way to Barclays?**

A. Well, they made their way into Barclays. My expectation of a return of the cash never occurred.

**Q. Why is that?**

A. Well, with the mechanics and everything that happened with the relationship with Chase that day, Chase didn't return any of the cash at that point.

**Q. Can you explain to me the problems you had with the relationship with Chase that day?**

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A. The morning of the 19th, Chase had effectively shut down our clearing accounts and stopped having communication with anything other than I think some very senior folks in Lehman Brothers.

**Q. And why did they do that?**

MR. SHAW: Objection. Foundation.

A. I don't know particularly why they do that. I mean, there was, you know, there was some speculation as to why they did that because of the status of our situation from a credit perspective and things like that, but I don't know if there was a particular trigger that caused them to do that.

**Q. Did you have any conversation with folks at Chase about this?**

A. On the morning of the 19th, no.

**Q. At any time?**

A. I mean, I had conversations with folks at Chase all through the night on the 18th, actually, technically, I guess into the morning of the 19th while we were trying to finalize the transaction. And after the morning of the 19th, I guess the very early morning, like in the 1, 2

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o'clock range, that was the last conversation I had with anybody at Chase.

**Q. What was that about?**

A. That was primarily about --

The last conversation or the last series of conversations?

**Q. Last series of conversations?**

A. The last series of conversations were in relation to securing a loan to create the \$7 billion which we placed on deposit with Barclays.

**Q. I see something referred to in the documents as a box loan. Is that the loan you're talking about?**

A. The 7 billion was a box loan, yeah. Lehman took a box loan from Chase and let -- as a result, Chase puts a lien on the assets for that \$7 billion in cash, yes.

**Q. What assets was that lien on?**

A. There were assets which were unencumbered assets sitting in Lehman's clearance boxes at Chase.

**Q. Is that an identifiable set of assets that now has a lien on them from Chase?**

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**Q. Right.**

A. The price, the prices, are the prices of the individual collateral that make up that loan, and in order for a loan to be effective, the value of the price times the par amount of the collateral should exceed the principal extended.

**Q. Okay. Is that what's known as the haircut, the amount by which it exceeds?**

A. The amount by which it would exceed the loan is known as the haircut, that's correct.

**Q. And so what was the haircut associated with the September 18 repo?**

A. There wasn't a -- there wasn't a specific stated haircut. There was a total loan amount, which was this \$45 billion, and the total collateral value that we were trying to transfer over to Barclays or what we were directed to transfer over to Barclays was approximately \$50 billion.

**Q. And that \$50 billion was comprised of the approximately \$42 billion in securities that you mentioned earlier plus the cash?**

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A. Well, it was -- it was -- we worked through the night of the 18th. So I guess it was very, very early in the 19th. So it was the morning of the 19th at like maybe 2 o'clock in the morning or something like that.

**Q. So, back to the notion of a haircut, the haircut for that transaction is the difference between the approximate \$50 billion in collateral and cash that was transferred to Bank of New York and the 45 billion that Barclays transferred to Lehman, correct?**

A. Could you repeat that one more time? I'm sorry.

**Q. I'm just trying to figure out what the haircut is for that transaction. I thought you said that approximately 50 billion was transferred to Bank of New York or Barclays?**

A. That's correct.

**Q. In the form of either collateral or cash?**

A. Uh-huh.

**Q. And that Barclays gave Lehman 45 billion in cash?**

A. Right, that's correct.

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A. It turned out that that was the case. It was initially intended to be all collateral, but the market value of what we were to transfer initially was \$50 billion.

**Q. Okay. And Barclays was, after the -- after they received the proceeds of the loan and the collateral, was Barclays satisfied that it had received the entire amount of collateral that it was expecting with respect to that repo?**

MR. SHAW: Objection. Foundation.

A. Yeah, I don't know whether they were satisfied or not. I mean, we completed the securities transfers until the point that we couldn't make any transfers because the system had been shut down, and we were requested at that point to deliver an additional 7 billion in cash, which we did.

**Q. Okay. When was that transferred, approximately?**

A. The 7 billion in cash?

**Q. Yes.**

A. Somewhere between 2 and 3 o'clock in the morning on the 19th.

**Q. Friday?**

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**Q. So that makes the haircut approximately \$5 billion?**

A. That would be correct.

**Q. Do you know what the haircut was for the Fed program earlier in that week?**

A. I don't. Again, the haircut, each security class had its own individual haircut, so there would have been a, I guess what's called a synthetic haircut, which, you know, would equate to something similar to what you did there, you know, so -- and I believe it was similar because the transaction was described to me as we were going to take the extension of financing that the Fed had offered to Lehman and we were going to help effect the transfer of that to Barclays so that Barclays could then step back into that transaction. So I believe it was similar. I don't know exactly what the haircut was.

**Q. Okay. And who described the transaction to you like that?**

A. John Rodefled, who was held of North American Operations at the time, had contacted Alastair and myself to talk about the



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transaction.

**Q. And what did he say about it?**

A. He basically told us that Barclays had been contacted by the Fed and Barclays was asked to provide a credit, a counterparty credit upgrade to the Fed, in essence. They were fine with financing the collateral basket that they were financing, but they would prefer not to have Lehman as a counterparty on the other side of that.

They asked Barclays to basically intermediate a transaction where Barclays offered Lehman the same financing that they had been -- that the Fed had been financing with them throughout that week, and then that Barclays would take that collateral and place it back on deposit with the Fed to make them whole on the cash transaction.

**Q. I think I understand what you just said.**

**What else did Mr. Rodefeld say on that call?**

A. Well, that call was on the 17th, and they initially were looking to actually effect

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that transaction the same day on the 17th. And then, you know, with some subsequent conversations, it just became -- it basically became an impossibility not just for Lehman Brothers, but for Bank of New York, JPChase, Barclays to do a transaction of that magnitude in the course of a day.

So from the 17th through the -- basically the whole 17th into the night of the 17th and even morning of the early 18th, we discussed the mechanics on how we would effect that transfer in the most efficient manner.

**Q. So do you recall anything else about what Mr. Rodefeld told you on that call?**

A. Not other than what I just described to you.

**Q. So am I correct to say that the initial intent was to have this transaction take place on the Wednesday of that week?**

A. From the first phone call, yes, it was intended to take place on Wednesday, but...

**Q. And just why mechanically was that not possible?**

A. There were numerous reasons from each

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of the parties. Purely from the size of the transaction, it was an extremely large transaction, and the number of securities involved were in the multiple thousand range, you know, I would say in the double-digit thousand range. So that was one of the issues.

So not just from a transactional perspective, but also from a static perspective on the Bank of New York's side, they didn't have a lot of these securities set up on their systems. It was going to take them time to set the securities up to be able to set up receipts for these securities and things along that nature.

**Q. So how was it possible to do it on Thursday as opposed to Wednesday?**

A. People were working 24 hours a day to get it done and bunches of people were brought in to help set things up and there were technologists brought in on all different sides to help do away from ordinary type transactions and things like that to get the securities transferred.

**Q. So am I correct to say that you**

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learned of the possibility of this transaction sometime on Wednesday, late Wednesday, and then people worked through Wednesday night and then all the way through Thursday night to get it done?

A. That's correct.

**Q. Okay. Did the nature of that transfer change at all? In other words -- let me rephrase that.**

You just described what Mr. Rodefeld told you about the transaction. Did that transaction change at all over the course of that Wednesday into Thursday?

MR. SHAW: Objection. Foundation.

A. The nature of the transaction itself, the spirit of the transaction, nothing changed, no.

**Q. Okay. That makes sense.**

A. Could I -- I apologize.

(Discussion off the record.)

(Recess; Time Noted: 10:31 A.M.)

(Time Noted: 10:38 A.M.)

BY MR. HINE:

**Q. Mr. Hraska, I just want to take a**



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**second to just talk again about your understanding of the transaction between Barclays and Lehman.**

**Did you ever have any understanding that there was supposed to be a discount associated with that transaction?**

**A. Which transaction? The repo transaction?**

**Q. No. No, the sale transaction between Barclays and Lehman.**

**A. I didn't have any knowledge as to what the terms of that transaction were.**

**Q. Did you ever hear the phrase "block discount" used in connection with either that transaction or the repo that we have been talking about?**

**A. No.**

**Q. Did you ever have any understanding that Barclays was going to be paying less than full value for the assets that it was buying from Lehman?**

**A. No.**

**Q. Did you ever hear any discussion about the possibility of defaulting on the repo that**

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**we have been discussing?**

**A. There was discussions related to that topic on the week of the 22nd.**

**Q. Tell me what you recall about that, those discussions.**

**A. Well, there was -- it was news that obviously LBI had filed for I guess SIPC protection. So the margin folks had contacted me on the morning of -- I don't know which morning, I believe it was on the 22nd, but if not, on the 23rd, to ask me if that transaction was being considered a default by Barclays. And at the time, I didn't know, but there was -- I then had conversations about whether that was going to be treated as default with my manager, and at the time, you know, we didn't actually know when it was or if it was going to be treated as in default.**

**Q. When we talk about "it," we're talking about the September 18 repo?**

**A. Repo itself, yes.**

**Q. And LBI filed for bankruptcy on Friday, the 19th?**

**A. That's my understanding.**

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**Q. And so you had conversations the following Monday about this?**

**A. Yes.**

**Q. And who were the conversations with?**

**A. I don't recall specifically. Somebody from the Margin Group. I don't recall specifically who it was from the Margin Group that I had a conversation with. And I also had a conversation with Monty Forrest, which is my manager.**

**Q. The Margin Group at Barclays?**

**A. The Margin Group at legacy Lehman Brothers.**

**Q. Do you recall the names of the individuals that you spoke to?**

**A. No, I just said I didn't recall it.**

**Q. To your understanding, was the September 18 repo unwound in some way?**

**A. To my understanding, it was defaulted and the collateral that was put up to securitize that loan was seized by Bank of New York for the benefit of Barclays.**

**Q. Okay. And did Bank of New York also seize the cash that had been posted?**

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**MR. SHAW: Objection. Foundation.**

**A. The cash itself was not in an account that or in a position for Bank of New York to seize. The cash itself was being held for the benefit of Barclays at JPChase.**

**Q. Okay. And what happened to that cash?**

**MR. SHAW: Foundation.**

**A. Barclays, because the cash was put into the account of their benefit, they -- later I understood, and it would make sense, that they claimed ownership of that cash. What happened to the cash after that, I sort of was removed from the transaction after they laid ownership claim to that cash.**

**Q. Okay. I guess do you understand that there was an ensuing dispute between Chase and Barclays as to the ownership of that cash, among other things?**

**A. I did, yes.**

**Q. And were you involved in that resolution of that dispute?**

**A. My only -- not in the resolution, no.**

**Q. What was your involvement in connection with that dispute?**

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**Q. I know you're not -- you didn't recognize some of the other numbers we just talked about. So, in your mind, approximately 42.9 billion is the value of the securities on Schedule A, correct?**

MR. SHAW: Objection.

Mischaracterizes. You can --

A. It was the value that I knew at the time of transfer, and whether or not that value changed or was subsequently discussed, I don't know, but it was the value that I knew at the time of transfer.

**Q. Okay. And you weren't involved in any discussions about other values with respect to that schedule, correct?**

A. No.

**Q. And do you think that's the value in your mind of the final version of Schedule A?**

MR. SHAW: Objection to form.

A. Again, I don't know if it was the final version. I know it was the value when I transferred it.

**Q. Maybe that was a bad question. Did Schedule A change in composition, to your**

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**knowledge, from the original chart that we looked at?**

A. In composition of securities? The number of securities and things like that? The schedule did not change. The pricing may have changed.

**Q. Okay. But you don't have any knowledge of whether the pricing changed?**

A. Other than the knowledge of looking at these documents here, there's obviously a discrepancy, but no upfront knowledge that it changed.

**Q. And you don't have any knowledge of the value of any securities on Schedule A being written down in connection with this reconciliation process?**

A. No. You asked that earlier, right? No.

**Q. Do you recall what the par value was for the security listed on Schedule A?**

A. I don't, no.

**Q. Okay. That's all I have with that document.**

**Mr. Hraska, you were involved in**

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**preparing Schedule B, correct?**

A. I was involved in giving a list of unencumbered collateral, which I understand some of which became Schedule B.

**Q. But you're not familiar with the terms Part 1 and Part 2 of Schedule B; is that right?**

A. No.

**Q. Are you familiar with any kind of discussions about the valuation of the securities that are on Schedule B?**

A. Well, there was the valuation that I knew to have transferred, which is 1.4 billion. I don't know what the ultimate valuation of that or the -- I don't know what the final version of that list was or the market value associated with that, so ...

**Q. Do you recall any discussions about any discrepancies in the valuation of the securities that comprised Schedule B?**

A. I remember there being discussions in valuation of those securities, discrepancies in general. I don't know whether they were specifically Schedule B or if they were just purely related to the repo we were discussing

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earlier, so ...

**Q. Well, I guess I'm just trying to -- was there a reconciliation process that went on with respect to the securities in Schedule B?**

A. There was a -- there was a reconciliation process from the standpoint of we were asked what securities were delivered, which we provided to the Finance folks, and the Finance folks did a spreadsheet compared to what they knew to be Schedule B and at one point told us something along the lines of -- I don't remember whether it was 800 Cusips or 800 million in value, but there was a number of 800, which whatever was the discrepancy on that. I believe it was Cusips.

**Q. 800 Cusips?**

A. 800 Cusips or security identifiers which weren't delivered.

**Q. And was that reconciled in some way?**

MR. SHAW: Objection to form.

A. The Cusips in question were looked at by the Clearance folks and my teams as to whether they were delivered or whether they could be delivered, and we verified that in fact

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they were not delivered.

**Q. And was there any effort to then deliver them later?**

A. There was an effort to see if they were available for delivery, and in most instances, they were actually not available for delivery.

**Q. So was any further action taken on that?**

A. For that -- for the particular securities on that list, no.

**Q. Were substitute securities delivered instead?**

A. Substitute securities were not delivered.

Let me just think about that. Yeah, no, there was no substitute securities delivered after that, no.

**Q. Was that possibility considered?**

MR. SHAW: Objection to form, foundation.

A. That possibility was considered. There was conversations that I had with the Treasury folks, who were prior legacy Lehman,

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but now, as a result of the timing, were now employed by Barclays, so Robert Azerad and those folks, as to whether or not there were other securities which were unencumbered that could be substituted for the securities that could not be delivered on the original Schedule B.

**Q. And what was the result of that discussion?**

A. The result of that discussion was is that we went through yet again another identification process to try to locate unencumbered securities that were available or that could be made available to transfer. At that point in time, by then, we no longer had capability to just go ahead and make a transfer. It would have been subject to approval by Deloitte and a few other folks before anything could be done.

**Q. So where does that effort now stand?**

A. The effort basically concluded with a subsequent set of lists that, you know, we feel are securities that are eligible to be transferred to Barclays.

**Q. And why have they not been**

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transferred?

MR. SHAW: Objection to form and foundation.

A. The clearance boxes in which they reside are presently under administration. So, as Barclays employees, we wouldn't have the ability to go and make those transfers without the administration's approval.

**Q. So does Barclays thinks it's entitled to these securities?**

A. I'm not a hundred percent sure what Barclays thinks. I was asked to go find something that was unencumbered in the Lehman boxes, which I did. I would speculate that Barclays would think they're entitled if they asked me to do that exercise.

**Q. Who would know at Barclays whether they think they're entitled to those securities?**

MR. SHAW: Objection to form, foundation.

A. I would start with the Treasury team and possibly the Legal team.

**Q. And who is the Treasury team to which you are referring?**

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A. Robert Azerad would be the point person that I would use, or Alan Kaplan in Legal.

**Q. Can you tell me an approximate value for those securities that are -- that you identified that were not able to be transferred?**

A. I would say 6 to 7 hundred million.

**Q. And that's based on Lehman valuations?**

A. Based on Lehman valuations at a particular point in time, which was November 17 of 2008.

**Q. Just so I have a little clarity, this effort to identify these additional securities took place after you transferred over to Barclays?**

A. That's correct.

**Q. Did it start during the weekend of September 20th at all?**

A. This particular exercise, no. It started I would say early October.

**Q. Okay. We had -- in discussing Schedule A, I think you said there was a reconciliation effort, but to the extent there was an effort to reconcile the values, that's**

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from my records.

**Q. Does the 1.4 billion figure you have testified about include assets that were transferred on the 19th of September?**

A. Yes, it does.

**Q. And what's the approximate value, to your knowledge, of the assets that were transferred on the 19th?**

A. A little bit over a billion. I believe it's like 1.034 or 35 billion.

**Q. You said that you looked across stock records the weekend of the 20th and 21st for assets over which there was no lien; is that correct?**

A. That's correct.

**Q. Is it fair to conclude that the results of your search for unencumbered assets or assets with no lien was the results were imperfect?**

A. That's fair to say, yes.

**Q. And it's fair to say because of the 800 or so Cusips that you testified earlier were identified to you as actually encumbered or other than unencumbered, correct?**

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A. That's correct, yes.

**Q. Can you tell me how you went about identifying --**

A. Can I just clarify something?

**Q. Of course.**

A. They were identified as -- on the system as not movable or encumbered, but we needed to do some more investigation because we didn't know whether they truly needed to remain encumbered or whether they were erroneously encumbered.

**Q. And did you do that investigation?**

A. I didn't personally do that investigation. There was -- there was a reconciliation effort that took place that reconciles stock record breaks which then later helped unencumber some of that collateral.

**Q. So, as I understand this, you were given a list that you called an exception list; is that correct?**

A. That's correct, yes.

**Q. Who gave you that exception list?**

A. I don't recall the person. I remember it came from Finance.

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**Q. And Finance is?**

A. Finance is like product control. Finance -- those are the names of the organization, Product Control Finance. I believe it's managed now by Martin Kelly and his team here at Barclays.

**Q. And can you tell me what an exception list is, please?**

A. The exception list as defined by what we're discussing was the Schedule B list versus -- the official Schedule B list versus the actual collateral delivered to Barclays subsequent to the 18th.

**Q. And at some point did you get a list of 800 Cusips that had not been delivered? Are we talking about the same list?**

A. That's the same list, yes.

**Q. And a reconciliation effort was then undertaken; is that correct?**

A. There was a reconciliation effort -- well, there was two things that were done. There was a verification to see whether or not those, in fact, those 800 were or were not delivered. We verified that those 800 were not

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delivered, and then there was a reconciliation just in general to resolve stock breaks at the firm which was done.

**Q. Of the 800 Cusips that you have verified or your team had verified were not delivered, did you determine whether or not any of those securities were in fact unencumbered?**

A. I didn't determine that, no.

**Q. Do you know if such a determination was made?**

A. I don't, no.

**Q. When were you given this exception list?**

A. I don't recall, honestly.

**Q. Can you give me any idea as the whether it was 2008 or 2009?**

A. Honestly, no.

**Q. Was it around the same time, Mr. Hraska, that you were asked to go and find additional unencumbered assets in Lehman's clearance boxes?**

A. Yes, but I was asked that multiple times at multiple stages. We talked about it over the weekend and then there was times where



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A. No, which is what led to the inconsistencies you referenced on my set of files that I first produced.

**Q. Those are those 800 Cusips that were not delivered, many of which were in fact determined ultimately to be encumbered, not unencumbered securities, correct?**

A. Yes.

**Q. Why were Lehman's stock records not fully reconciled over that weekend?**

A. Well, as I'm sure you're aware, the financial markets were going through down -- quite of a meltdown in that period and, more specifically, Lehman Brothers. There was an inordinate amount of activity going through our clearance boxes, through our front ends and back ends processing systems.

In addition to that, there were relationship troubles with JPMorgan Chase, and as a result of that, there was information that was typically received, like file transfers that represent statement balances and things like that, that we would normally expect to receive from your custodians which were not sent to

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Lehman Brothers on either the night of the 19th or during bat cycles on the 20th. So it was very difficult to do a reconciliation without a complete set of data.

**Q. Did you ever get to have a complete set of data such that you could make that reconciliation?**

A. The firm received additional data. I personally wasn't in charge of those reconciliations. So, as to the nature of its completeness, I couldn't testify to that.

**Q. Who was in charge of any subsequent reconciliations of the firm's stock records? And my question is with respect to Schedule B or subsequent iterations of Schedule B, as far as you're aware, sir.**

A. Well, that's two questions. So there's a group that's responsible for the stock record reconciliations, which is the firm Balancing Department, which I don't remember who was in charge of it at the time, but it would have been the firm Balancing Department that's responsible for that in conjunction with the Clearance folks.

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They focused on putting the stock record back in balance, but I don't know whether there was any reconciliation once the stock record was back in balance to the original Schedule B.

**Q. The securities that were transferred from Lehman to Barclays on the 19th?**

A. Yes.

**Q. Was it your idea to transfer those or was that the idea of someone you reported to?**

A. It wasn't that it was a unique idea of my own. What it was, it was a normal course transaction, which we had previously deposited cash as a result of the problems we had the night before.

And in a repo transaction, I think I mentioned earlier, you typically wouldn't deposit cash to get cash. So it's, you know, it's a normal course transaction and it was a situation where you're not using your collateral efficiently to try to find substitute collateral. Especially in a tri-party arrangement, you have full rights to go ahead and do that, and that type of transaction is

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typically affected by Operations personnel, not Trading personnel.

So, you know, I discussed with the folks at Barclays the previous night and, you know, and at Lehman that we were going to, you know, the next morning we were going to look to do exactly that and replace the cash with, you know, substitute collateral.

**Q. Can you be more specific about the names of the people you discussed this with?**

A. At Barclays I spoke to John Rodefild about it, and at Lehman I would have spoke to Monty Forrest and Alastair Blackwell about it.

**Q. And did Mr. Forrest and Mr. Blackwell approve of this transaction?**

A. Yes, they understood it to be a normal course function that I would have done at any other point in time.

**Q. So I'm clear, it was something that -- this transfer of approximately \$1.1 billion was done on your initiative, correct?**

A. That's correct, yes.

**Q. But what you say is this is something that was --**



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A. Commonplace.

Q. -- commonplace in this commercial situation?

A. Yes.

Q. And the underlying commercial contract that governed this transaction was the tri-party repo that you've testified about today?

A. Yes.

Q. And just so the record is clear, no cash was ever returned to Lehman in return for this transfer of \$1.1 billion in additional unencumbered collateral to Bank of New York on the 19th of September, correct?

A. To my knowledge, that's correct.

Q. I have a few documents to show you. (Exhibit 147B, an e-mail sent from Mr. Hraska to Paolo Tonucci, copying others, on Friday, the 19th of September, 2008, marked for identification, as of this date.)

Q. Showing you, Mr. Hraska, what I've marked as Tab 147B. Let me know when you've had a chance to look at that document.

(Document review.)

A. Okay.

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Q. I'll identify this for the record as an e-mail sent from Mr. Hraska to Paolo Tonucci, copying others, on Friday, 19th of September, and at this time written here 2:28 P.M. is in GMT. So in Eastern Standard Time, that's about 10:30 in the morning.

A. Uh-huh.

Q. Do you recognize this document, sir?

A. I do.

Q. The subject is pledges. It says, "Paolo," and you write to Mr. Tonucci, "We managed to pledge over about 800 MM in MV to BarCap." What does that mean?

A. "MM" is a term that means millions, and "MV" is market value. So the assets that we had pledged over up to that point were, in our estimation, from the, you know, our systems, the way we had them marked, was worth about 800 million in value.

Q. So the 800 in MV is Lehman's marks?

A. Those are Lehman's marks, yes.

Q. And was this a transfer that you had instructed on Friday morning, the 19th?

A. That was part of it. Being that it's

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only 800 million, I don't believe it was all of it that ultimately ended up getting transferred over.

Q. Is this 800 million part of the 1.1 million we have just been discussing that was transferred that same day, the 19th?

A. It would have been, yes.

Q. You go on to say, "We may have identified another 500 million, but I wanted to check with you first before pledging it to them."

A. Yes.

Q. Do you recall whether Mr. Tonucci replied to you?

A. I don't recall.

Q. That's all I have for that document. (Exhibit 148B, an e-mail chain, the first in time dated September 19, 2008, at 3:43 P.M., marked for identification, as of this date.)

Q. I've handed you a document I have marked as Exhibit 148B. Tell me when you've had a chance to look through it.

(Document review.)

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Q. Of course, you are welcome to look at the whole document. It's really the original e-mail at 3:43 P.M. that I'm going to focus my questioning on. It's a two-page document. It's double-sided.

A. I didn't realize it was double-sided. I'm sorry.

(Document review.)

A. Okay.

Q. At 3:43 P.M. on Friday, 19th, you write to Mr. Feraca, Mr. Aronow, and others, on the subject of an urgent tri unwind. You say, "We pledged only 800 million of new collats to BarCap. All is frozen."

A. Are we talking about the same document?

(Indicating.)

A. Oh, on the very last sentence. I'm sorry. Okay. I'm sorry. Go ahead.

Q. Do you see where it says, "We pledge only 800 million of new collat to BarCap. All is frozen"?

A. I do, yes.

Q. Does that refresh your recollection

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the collateral, and those market values came from the work that me and my team did. So I don't know why he's referencing finance systems here. These were collateral pieces that were based in the mainframe which was picked up by GFS. I'm just not sure what he's referring to by "financing systems."

**Q. So you see there's a total there, Mr. Hraska, of close to \$2.3 billion?**

A. Yes.

**Q. Does that represent the unencumbered assets that, at least as of the date of this e-mail, you and your team had been able to identify?**

MR. SHAW: Objection to form.

A. I can't be certain. I can't be a hundred percent certain. I don't know.

**Q. Did you look for unencumbered assets in any location other than those listed in the e-mail from Mr. Forrest here?**

A. We looked for all unencumbered assets in the stock records. These were the ones that we thought that had the highest probability of having unencumbered assets in them. They were

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our primary clearance boxes.

**Q. Were you looking for physical securities as well, Mr. Hraska, that weekend?**

A. We had, yes, we had looked through some of the clearance locations for physical securities, but based on the analysis, we, over the course of that weekend, weren't confident enough that we could determine whether those assets were unencumbered or not so we left them off of this analysis.

**Q. Did you leave physical securities off not just this analysis, but any analysis of unencumbered assets you provided to Mr. Forrest?**

MR. SHAW: Objection. Vague as to time.

**Q. My question is specifically with respect to this weekend of the 20th and 21st of September.**

A. We did an analysis of this weekend. Based on that analysis, we didn't forward any value of unencumbered securities which were physical.

**Q. You see the paragraph immediately following the 2.3 billion number?**

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A. Uh-huh.

**Q. Relates to BONY Tri Pledge line item?**

A. Yes.

**Q. Does that refresh your recollection about any of your prior testimony about the reason the file was restored?**

A. Well, it was restored because we wanted to maintain records, but according to this, it appears that complete restore maybe wasn't possible. But I wouldn't change my reason to have requested the restore on the file.

**Q. After reading this e-mail, is it still your testimony that the transfer of approximately \$1.1 billion from Lehman to BONY pledged to Barclays on the 19th of September settled?**

A. Yes.

**Q. That's all I have with that exhibit.**

I'm handing you, Mr. Hraska, a one-page document that's previously been marked Exhibit 93B. If you can take a look at that and let me know when you've reviewed it, please.

I'm sorry, it's a two-page document.

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(Document review.)

**Q. I'll direct your attention to item 1 in the box, and if you would just identify for the record. This document is entitled "Management of Unencumbered Asset Gap."**

Actually, let me first direct your attention to the first line that says, "Objective: Delivery to BCI of 1.95 billion of unencumbered collateral by COB Friday, September 19." Do you see that?

A. I do, yes.

**Q. Were you aware of any objective to deliver 1.95 billion of unencumbered collateral to Barclays by the close of business on Friday, the 19th?**

A. No.

**Q. Item 1 in the box that's headed "Current Status Summary" is "Actual Delivery EOD Friday." Do you see that?**

A. I do.

**Q. Do you believe that refers to the approximately \$1.1 billion of collateral that we've been discussing that was transferred from Lehman to Bank of New York on Friday, 19th?**

**HIGHLY CONFIDENTIAL - J. HRASKA**  
this delta figure of 362 million here?

A. Yes, that's correct.

**Q. Do you have any understanding of the reason for the difference?**

A. Well, this is purely a delta of the two figures that Mr. Forrest provided. The 600 to 700 million that I was referring to were based off an analysis of unencumbered securities in the Lehman boxes at a later date and time. So I think that's where there's a discrepancy because of the timing.

**Q. Are you able to estimate a total of the unencumbered securities in the various Lehman clearance boxes that you reviewed, either over the weekend of the 20th and 21st of September or subsequently, are you able to give me a total of the unencumbered securities that you believe you identified?**

A. On that weekend? Or, when you say "subsequently"?

**Q. At any time subsequently. Obviously you identified a figure that fluctuated, as we saw in the documents that we looked at and you looked at with Mr. Hine of approximately 1.9 to**

**HIGHLY CONFIDENTIAL - J. HRASKA**

**2 billion dollars?**

A. Yes.

**Q. And you've subsequently identified additional collateral you say of at least a few hundred million?**

A. That's correct.

**Q. Correct. Are you able to give me, just in broad terms, an estimate of the total amount of unencumbered collateral that you believe you have identified?**

A. That would be available let's say as of today if nothing had happened in the clearance box?

**Q. Yes. That's a much better question than I would have been able to articulate. Thank you.**

A. Yes, that's the 6 to 7 hundred million dollar figure.

**Q. And the total would be the 6 to 7 hundred million dollar figure plus this \$1.587 billion figure that has already been transferred subject, of course, to your caveat that you believe the BONY Tri Pledge number may be off by a factor of 10 percent or so, is that correct?**

**HIGHLY CONFIDENTIAL - J. HRASKA**

A. That's correct, yes.

**Q. Last document.**

(Exhibit 156B, a letter from Cleary Gottlieb Stein & Hamilton is James Kobak at Hughes Hubbard dated October 6, 2009, marked for identification, as of this date.)

(Discussion off the record.

(Recess; Time Noted: 5:24 P.M.)

(Time Noted: 5:30 P.M.)

BY MR. OXFORD:

**Q. You testified in response to a question from Mr. Hine that you had been involved, Mr. Hraska, in efforts to refine Schedule B, do you remember saying that?**

A. Yes.

**Q. Can you tell me briefly about those efforts to refine Schedule B?**

A. I don't know that I testified that I was involved in an effort to refine Schedule B but, rather, to identify additional assets that perhaps were not on the original Schedule B that were unencumbered.

**Q. And you were also involved, I think you testified, in ascertaining that certain**

**HIGHLY CONFIDENTIAL - J. HRASKA**

**assets that were on the exception list were in fact encumbered and unavailable for delivery; is that correct?**

A. I'm sorry, could you repeat that question or just read it back to me?

(Record read.)

A. That they were unavailable for delivery. I can't be certain that they were unencumbered; just they were unavailable for delivery.

**Q. Why would they be unavailable for delivery other than the fact that they are encumbered?**

A. It's possible that at a point in time a particular asset wouldn't have been in the actual box itself. So, in other words, there might have been an inventory position versus a break account instead of versus the actual repository.

**Q. Can you take a look at what I've marked as 156B?**

A. Sure.

**Q. Which is a letter from Cleary Gottlieb Stein & Hamilton is James Kobak at Hughes**

1  
2 UNITED STATES BANKRUPTCY COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 IN RE: )  
5 )  
6 LEHMAN BROTHERS HOLDINGS, INC., )  
7 et al., ) Chapter 11  
8 ) 08-13555(JMP)  
9 Debtors. ) (Jointly  
10 ) Administered)  
11 )  
12 ----- )

13 DEPOSITION OF JIM HRASKA  
14 New York, New York  
15 Friday, January 15, 2010  
16  
17  
18  
19  
20  
21  
22  
23

24 Reported by:  
25 Philip Rizzuti  
JOB NO. 27206

**Hraska**

**sufficient review of Exhibit 25, sir?**

A. Yes, I have.

DI Q. Can you tell me, sir, as Barclays' 30(b)(6) witness whether there is any -- anywhere reflected in the clarification letter any agreement between the parties that Barclays retained any right to amend or supplement Schedule B?

MR. SHAW: Objection. Beyond the scope of the 30(b)(6) testimony. He is not here to testify about the content or meaning of the clarification letter. As I already indicated to you the agreement in question was contained in a joint motion filed with the court and not the clarification letter.

**Q. Do you have the question in front of you, sir?**

A. Could you read it back.

(Record read.)

MR. SHAW: I continue to object. Beyond the scope of the 30(b)(6) designation and I am going to instruct him not to answer this question as

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**Hraska**

Barclays witness. If you want to ask him that question in his personal capacity you are welcome to do so.

**Q. Well, we can disagree or agree on the scope of the notice, but I will ask it in the witness' personal capacity.**

**Do you have the question in front of you, sir?**

A. Read it back.

(Record read.)

A. From the review of this document it does not appear there to be any agreement in that section.

**Q. Or any other section that you can see today, sir?**

A. Well I only reviewed that section.

**Q. Moving further down your notes, sir, again under topic 32-A, you say that Schedule B was compiled by many people including -- and then you List A number of names here?**

A. Yes.

**Q. Can you tell me, please, for each of them in turn who they were employed by**

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**Hraska**

**prior to the closing of the deal on September 22nd and what their role was in compiling Schedule B?**

A. Sure. Anthony Crispino employed by Lehman Brothers was a clearance representative. William -- let me go back to Anthony Crispino. He provided data as to the depot accounts along with -- depot accounts is enough.

William Parrinello was a technologist whose specialty was in the GFS system. Myself also employed by Lehman Brothers who worked interpreting the data once retrieved. Nancy Denig who also worked at Lehman Brothers who works in my organization also to do interpretation work and spreadsheet work.

Paolo Tonucci also at Lehman Brothers was the recipient of the data from the treasury group. Robert Azerad at Lehman Brothers, worked for Robert Azerad at treasury, also a recipient of data, as well as reviewing the data and providing the spreadsheets. And the legal, the gentleman

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**Hraska**

from Weil, Gotshal, I am not sure what their role was.

**Q. You write that Schedule B was compiled by many people including the list of people that you named here. Do you know whether there were any other people involved in the compilation of Schedule B?**

A. How broad are you defining involved; the primary people for its genesis are listed. There may have been other people who worked in the organizations for these people who either reviewed a portion or made suggestions or something like that. But beyond the scope of the list of people listed here I wouldn't know who these people might have instructed somebody else to look at.

**Q. That is understood.**

A. Yes.

**Q. Can you give me more information on the interpretation work that Nancy Denig did in the compilation of Schedule B?**

A. She was primarily my spreadsheet mechanic. She is -- I am an average spreadsheet user, she is a much better

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Hraska

spreadsheet user with results around pivoting and macro'ing, and sorting and filtering.

**Q. That doesn't sound like interpretation work to me. I asked you about the interpretation work that Nancy Denig did?**

**A.** So then I would say that that is -- that was an incorrect description then. She would have taken the spreadsheet, I would have asked her for specifics -- series of data and she would have filtered it out and provided that.

**Q. Yes.**

**A.** She was also familiar with -- she was very familiar with the GFS system and we were using that as a primary search tool. So William Parrinello, Nancy and myself were working to create the rules to pull data using the GFS system.

**Q. I think you testified that Mr. Tonucci and Mr. Azerad were recipients of did data, do you remember that testimony?**

**A.** Yes, I do.

**Q. In your notes you list both of those individuals as people who were involved**

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Hraska

**in compiling Schedule B. Can you tell me what the role was of Mr. Tonucci in compiling Schedule B?**

**A.** He had primarily instruction to look for clearance box assets came from Mr. Tonucci. So it was at his direction that we were doing it. So I interpreted that to be that he was involved in compilation work.

**Q. Is it accurate to say that Mr. Tonucci wasn't involved in the gathering or analysis of data to your knowledge?**

**A.** I would say he was not involved in the gathering of data. I believe he was heavily involved in the analysis of data.

**Q. Tell me what you recall or rather tell me what you know about Mr. Tonucci's instruction to look for clearance box assets?**

**A.** He had requested us to look for assets which were not segregated or fully paid for which could be -- which could be delivered to Barclays if requested as part of the purchase agreement.

**Q. When did Mr. Tonucci issue that request to you?**

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Hraska

**A.** He didn't issue it directly to me. He would have issued it to Alister Blackwell. I would have been on call subsequent to that where he would have been describing what his request was. But that would have been -- I am not certain the time it would have been I believe on that Saturday. I believe that is the 20th of September.

**Q. Did Mr. Tonucci issue a -- or request Mr. Blackwell gather a specific amount of non-segregated or non-fully paid for assets that could be delivered to Barclays?**

**A.** I believe we were looking for a target of approximately 1.9 billion.

**Q. Who was that target set by, sir?**

**A.** From my perspective Mr. Tonucci. I don't know who agreed or who set it.

**Q. It is from your perspective Mr. Tonucci, how do you know that?**

**A.** Because we were asked to find the clearance box assets and we were asked to find at least 1.9 billion of them.

**Q. Was it Mr. Blackwell who asked you to find at least 1.9 billion of assets that**

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Hraska

**could be delivered to Barclays?**

**A.** I mean Mr. Blackwell would have sent a communication down to me. I don't know whether it would have been to join a meeting to discuss it or he directly told either myself or Mr. Forest who I worked for to send that message down to us. At the end of the day I mean the instruction came from Mr. Tonucci. So specifically who gave it to me I don't recall.

**Q. You don't list any Barclays personnel as involved in the compilation of Schedule B; is that correct?**

**A.** That is correct.

**MR. SHAW:** A point of clarification, you mean --

**MR. OXFORD:** Is it correct --

**MR. SHAW:** You mean preclosing Barclays employees or --

**MR. OXFORD:** We are going to get there.

**A.** Could you repeat the question again.

**Q. Focusing on the timeframe prior to**

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1 Hraska

2 the details.

3 Q. Turning to topic 32-B, sir?

4 A. Yes.

5 Q. Was it your intention in compiling  
6 Schedule B to exclude any fully paid customer  
7 or affiliate securities?

8 A. Yes.

9 Q. Do you believe that was the  
10 intention of all of the individuals who you  
11 have testified were involved in compiling  
12 Schedule B?

13 A. Yes.

14 Q. Did someone issue to you a  
15 direction to exclude any fully paid customer  
16 or affiliate securities from Schedule B?

17 A. Yes, that would have been Paolo.

18 Q. Do you agree with me, sir, that if  
19 any fully paid customer or affiliates were  
20 accidentally included on Schedule B, they  
21 should be removed from that list?

22 MR. SHAW: Objection. Calls for a  
23 legal conclusion. Beyond the scope of  
24 the 30(b)(6).

25 Q. Was it the intention, sir, in

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1 Hraska

2 compiling Schedule B that only unencumbered  
3 assets in Lehman's clearing box be included?

4 A. Yes.

5 Q. Can you tell me please what you  
6 mean by the term or understand by the term  
7 unencumbered assets?

8 A. Assets which would have been fully  
9 paid for by a -- I am sorry, assets which were  
10 not fully paid for by a customer.

11 Q. If assets had been pledged by  
12 Lehman for example as part of a bank loan,  
13 would those assets be eligible to your  
14 understanding for the inclusion in Schedule B?

15 A. It would have depended on whether  
16 the pledge itself was carried out in a manner  
17 which would have reflected on the stock record  
18 that it was a segregated account versus a  
19 non-segregated account. Had it been placed in  
20 a segregated account they would have been  
21 excluded from Schedule B.

22 Q. If it was pledged but not placed  
23 in a segregated account it would have been  
24 included in Schedule B?

25 A. If the securities would have been

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1 Hraska

2 in an account which would have appeared on the  
3 stock record as unsegregated, then it would  
4 have appeared on Schedule B.

5 Q. Did you understand the direction  
6 from Mr. Tonucci to identify approximately 1.9  
7 billion of assets in the Lehman clearing boxes  
8 to include a direction to search for assets  
9 that Lehman had pledged but not segregated?

10 A. Could you be more specific on  
11 pledged?

12 Q. I am not sure I can. Can you be  
13 more -- can you answer my question like that?

14 A. Well Schedule B as referenced here  
15 was the composition of two components. One  
16 which were securities which were pledged to  
17 the Bank of New York for the benefit of  
18 Barclays. Those assets were skill in Lehman's  
19 clearance boxes, but were pledged for the  
20 benefit of Bank of New York. And then the  
21 second component of that would have been the  
22 work that was done around the review of the  
23 stock record using GFS which would have  
24 yielded securities in accounts which were in  
25 non-segregated locations.

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1 Hraska

2 Q. Was it your intention, sir, to  
3 include both of those categories of assets in  
4 Schedule B, or only one?

5 MR. SHAW: Asked and answered.

6 Q. Was it your intention, sir, to  
7 include on Schedule B the assets that Lehman  
8 pledged on Friday the 19th of September?

9 A. The original exercise was to look  
10 for assets which were purely on the Lehman  
11 stock record as unencumbered. We were later  
12 instructed by Mr. Tonucci to also include  
13 these assets which were pledged on the 19th as  
14 well as part of Schedule B.

15 Q. When did that instruction to  
16 include the pledged assets from September 19th  
17 come from Mr. Tonucci?

18 A. I don't have a specific time, but  
19 it would have been in the latter part of that  
20 weekend.

21 Q. So before the closing of the  
22 transaction?

23 A. Yes, correct.

24 Q. If a security was pledged by  
25 Lehman as part of a bank loan but not placed

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<p>1 Hraska 2 pledged, Lehman -- 3 A. Took loans to replace the cash? 4 Q. That was used to purchase the 5 CUSIP's that was partly paid for by the prime 6 broker customer, you understand that Lehman 7 has an obligation to pay that too? 8 A. I didn't realize that that is what 9 you were referring to. So based on that could 10 you please repeat the question to me. 11 (Record read.) 12 MR. SHAW: I object. Beyond the 13 scope of the 30(b)(6) testimony. It 14 lacks foundation. Calls for legal 15 conclusion. 16 THE WITNESS: Can I answer? 17 MR. SHAW: If you know the answer 18 you can answer. 19 A. Based on the previous testimony 20 these positions should have been in a stock 21 record location that we would have shown the 22 assets still being held in one of our 23 clearance boxes. If they were being financed 24 and the securities were no longer in our 25 possession we wouldn't have made any attempt TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Hraska 2 to try to repay the loan in a scenario like 3 that, because under those scenarios as we 4 discussed earlier the person that we gave the 5 securities to would have kept them under the 6 default of the financing. 7 Q. Just back to the original creation 8 of Schedule B for a second. The instruction 9 came -- 10 A. Schedule B, back to 32 then? 11 Q. Yes. Did the instruction from Mr. 12 Tonucci to identify unencumbered assets, was 13 that instruction limited to any particular 14 depository locations? 15 A. The initial request was not. So 16 we were to look at all clearance locations 17 available on the stock record which were not 18 fully paid for customers. 19 Q. Did you do so? 20 A. We did, yes. 21 Q. And the fruits of that initial 22 instruction and your labor consequent to that 23 instruction are reflected on Exhibit B; is 24 that correct? 25 A. That is correct. That was what we TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 Hraska 2 produced on that weekend which subsequently 3 became Schedule B. The one place we had some 4 difficulty on that weekend was we knew we had 5 a lot of physical securities in physical 6 locations and we were unable to confidently 7 determine what were firm physical securities 8 and what were not until later on. So that 9 further analysis that was done after the 22nd 10 yielded some physical securities that we felt 11 then confident later that we would be entitled 12 to. 13 So I think I would like to 14 clarify, I think I testified earlier that 15 there were no changes to the security list 16 initially put forth versus what was filed on 17 the 30th. I would like to amend that by 18 saying that the physical securities were added 19 to the list that was finally submitted on the 20 30th. 21 Q. To your knowledge were there any 22 other changes to the version of Schedule B 23 that was available at the closing of the 24 transaction on the 22nd and the finally 25 submitted Schedule B that was filed with the TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Hraska 2 Bankruptcy Court on the 30th of September 3 other than this addition of physical 4 securities that you just testified to? 5 A. I believe there may have been some 6 discrepancies on some of the CUSIP's, but I 7 don't know what the materiality of those 8 discrepancies are. I think primarily they are 9 essentially the same. 10 Q. Did you personally add the 11 physical securities to the list, Schedule B? 12 A. I don't believe I personally added 13 the physical securities, no, I created the 14 initial list. I think Robert Azerad's team 15 did. 16 Q. Mr. Hraska, included on Schedule B 17 are a number of securities that are in 18 accounts other than the DTC; right? 19 A. Yes. 20 Q. That reflects your initial 21 instruction coming down from Mr. Tonucci that 22 you and the rest of the team involved in 23 gathering and identifying the securities 24 should look everywhere for available 25 inventory; is that accurate? TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 Hraska</p> <p>2 <b>A. Yes, that is accurate.</b></p> <p>3 <b>Q. That search for additional</b></p> <p>4 <b>inventory, sir, that you and your team</b></p> <p>5 <b>conducted subsequent to September 30th that</b></p> <p>6 <b>led to the creation of Exhibits B and C that</b></p> <p>7 <b>you testified to today also included search</b></p> <p>8 <b>for inventory outside of the DTC boxes; is</b></p> <p>9 <b>that correct?</b></p> <p>10 A. Yes, that is correct.</p> <p>11 <b>Q. Do you know, Mr. Hraska, whether</b></p> <p>12 <b>there were any residential mortgage securities</b></p> <p>13 <b>that were identified as a separate category of</b></p> <p>14 <b>assets that were to be purchased by Barclays</b></p> <p>15 <b>under the original asset purchase agreement?</b></p> <p>16 MR. SHAW: Objection. Beyond the</p> <p>17 scope of the 30(b)(6). You already had</p> <p>18 your shot with him as an individual</p> <p>19 witness.</p> <p>20 <b>Q. Do you know, sir?</b></p> <p>21 A. Just repeat the question.</p> <p>22 MR. OXFORD: If you want to go off</p> <p>23 for a second I can explain why I am</p> <p>24 asking the question. Off the record.</p> <p>25 (Recess taken.)</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Hraska</p> <p>2 <b>Q. Mr. Hraska, I am asking this</b></p> <p>3 <b>question in your individual capacity, not as a</b></p> <p>4 <b>30(b)(6) witness of Barclays. Do you know</b></p> <p>5 <b>whether or not there were any residential</b></p> <p>6 <b>mortgage backed securities that were</b></p> <p>7 <b>identified as a separate category of assets</b></p> <p>8 <b>that were to be transferred to Barclays under</b></p> <p>9 <b>the original asset purchase agreement?</b></p> <p>10 MR. SHAW: Objection. Foundation.</p> <p>11 A. Read it back, please.</p> <p>12 (Record read.)</p> <p>13 A. I believe that there was, but they</p> <p>14 would have been included in the assets that</p> <p>15 were available to be transferred in the</p> <p>16 overall list. So there was a discussion about</p> <p>17 residential mortgages, but those resided in</p> <p>18 the same clearance boxes and locations as the</p> <p>19 other securities that were in question.</p> <p>20 <b>Q. Do you know whether those</b></p> <p>21 <b>residential mortgage securities ended up on</b></p> <p>22 <b>Schedule B?</b></p> <p>23 MR. SHAW: Objection.</p> <p>24 <b>Q. Do you know whether any of those</b></p> <p>25 <b>residential mortgage securities that were</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 Hraska</p> <p>2 <b>identified as a separate category in the</b></p> <p>3 <b>original APA ended up being included on</b></p> <p>4 <b>Schedule B to the clarification letter?</b></p> <p>5 MR. SHAW: Objection. Foundation.</p> <p>6 A. I am sorry, can you read that back</p> <p>7 again.</p> <p>8 (Record read.)</p> <p>9 A. I don't know for a fact, but it is</p> <p>10 plausible that some of them might have ended</p> <p>11 up on Schedule B based off of the criteria</p> <p>12 that was used to create Schedule B.</p> <p>13 <b>Q. If I asked you the same question</b></p> <p>14 <b>with respect to Exhibits A and B would you</b></p> <p>15 <b>have the same answer?</b></p> <p>16 A. Exhibits A and B?</p> <p>17 <b>Q. Yes.</b></p> <p>18 A. Its possible that Exhibits A and B</p> <p>19 would have contained that asset class, but it</p> <p>20 is less likely.</p> <p>21 <b>Q. Why is it less likely, sir?</b></p> <p>22 A. Because those asset classes were</p> <p>23 held in a different system.</p> <p>24 <b>Q. Which two systems are you talking</b></p> <p>25 <b>about in your testimony here?</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Hraska</p> <p>2 A. The residential mortgages would</p> <p>3 have been held in the system called MTS, and</p> <p>4 would have been held in a clearance box DTC</p> <p>5 participant ID 636.</p> <p>6 <b>Q. I take it that these two locations</b></p> <p>7 <b>for the residential mortgage securities were</b></p> <p>8 <b>not sources that you were looking at for the</b></p> <p>9 <b>compilation of the data that led to Exhibits A</b></p> <p>10 <b>and B; is that correct?</b></p> <p>11 A. That is correct, yes.</p> <p>12 <b>Q. You mentioned that there were some</b></p> <p>13 <b>conversations about residential mortgage</b></p> <p>14 <b>securities. What were you referencing?</b></p> <p>15 A. Trying to recall, it was a long</p> <p>16 time ago. I honestly don't recall the</p> <p>17 specifics. I remember us talking about</p> <p>18 residential mortgages. I remember us talking</p> <p>19 about where were they located. Would they be</p> <p>20 physically able to be moved as part of the</p> <p>21 asset purchase agreement to Barclays. What</p> <p>22 type of assets were they, were they DTC or</p> <p>23 physical, that type of stuff. Beyond that I</p> <p>24 don't remember much more.</p> <p>25 <b>Q. Who is the "us" that you are</b></p> <p>TSG Reporting - Worldwide 877-702-9580</p>



1 Hraska  
2 So therefore he wanted to look at  
3 those securities and their locations and  
4 determine whether they were physically able to  
5 be moved to Barclays as a result of the  
6 transaction.  
7 **Q. I think I understand.**  
8 **So during that effort to locate**  
9 **these additional assets to be transferred to**  
10 **Barclays was there some consequence associated**  
11 **with not meeting this \$1.9 billion target?**  
12 MR. SHAW: Objection. Beyond the  
13 scope of the 30(b)(6). Foundation.  
14 A. Can you define consequence?  
15 **Q. Was Barclays not going to close if**  
16 **you didn't meet the \$1.9 billion?**  
17 MR. SHAW: This is so far beyond  
18 the scope of the 30(b)(6).  
19 MR. HINE: This is the origin of  
20 Schedule B. This is the --  
21 MR. SHAW: No. The origin of  
22 Schedule B is a far more discreet topic.  
23 I mean under your theory the fact that  
24 Lehman went bankrupt would be something  
25 that you would be entitled to because  
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1 Hraska  
2 done it a couple of times, but if this  
3 30(b)(6) subpoena, I am going to keep flipping  
4 back and forth, I am happy to answer --  
5 MR. SHAW: Off the record for a  
6 second.  
7 (Recess taken.)  
8 **Q. Back on the record.**  
9 A. So I apologize, could you repeat  
10 the question to me.  
11 (Record read.)  
12 MR. SHAW: Objection. Foundation.  
13 This is an individual question, not  
14 30(b)(6).  
15 MR. HINE: I asked it in a  
16 30(b)(6), I note your objection, and he  
17 is not answering the 30(b)(6), so I would  
18 like his answer as an individual.  
19 A. As an individual, as a Lehman  
20 employee at that time I had no knowledge as to  
21 whether Barclays would close or not.  
22 **Q. Did your team assembling these**  
23 **assets that would eventually become Schedule B**  
24 **in fact meet that target?**  
25 A. The target of raising assets which  
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1 Hraska  
2 absent the bankruptcy we wouldn't have  
3 had a deal and so forth. At some point  
4 we have to draw a line between the origin  
5 of Schedule B and everything that led up  
6 to the transaction.  
7 MR. HINE: That entire weekend is  
8 assembling the assets that eventually  
9 become Schedule B. I am just asking --  
10 MR. SHAW: I continue to object.  
11 Way beyond the scope of the 30(b)(6). I  
12 will let him answer if he knows anything  
13 about this. But it is not something that  
14 he has been put forth as a 30(b)(6)  
15 witness on and he is not prepared on  
16 this.  
17 A. Repeat the question, please.  
18 (Record read.)  
19 MR. SHAW: Same objections.  
20 **Q. If you know?**  
21 A. As a 30(b)(6) witness I can't  
22 answer that question.  
23 **Q. In your individual capacity do you**  
24 **know; I am asking you --**  
25 A. I guess my question is, we have  
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1 Hraska  
2 had a value of --  
3 **Q. The \$1.9 billion target that Mr.**  
4 **Tonucci communicated to you?**  
5 A. Yes, we did.  
6 **Q. Did you exceed that target?**  
7 A. Yes, we did.  
8 **Q. By how much?**  
9 A. Without having my spreadsheets, to  
10 approximate I would say 300ish million.  
11 **Q. Why didn't you stop when you met**  
12 **the target?**  
13 A. We didn't stop because I was asked  
14 from my perspective from an operational  
15 perspective did we feel that -- what was the  
16 probability of us being able -- what were the  
17 mechanical probabilities of us being able to  
18 actually deliver assets to Barclays that were  
19 located in the various locations that we  
20 found.  
21 Some of the locations were  
22 locations which were held by custodial banks  
23 outside the U.S., and as a result of the  
24 holding situation some of those accounts, our  
25 access had been frozen. So even though the  
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1 Hraska  
2 securities showed as unencumbered, the  
3 probability of us being able to action or move  
4 any of those securities was very likely not  
5 going to happen.  
6 So based on that we tried to  
7 assemble as much unencumbered collateral as we  
8 could in locations where we still felt we had  
9 the capability to action that collateral and  
10 deliver it to Barclays.  
11 **Q. So when you assembled this**  
12 **additional 300 million in assets that you**  
13 **testified about --**  
14 A. Can I stop you there?  
15 **Q. Yes.**  
16 A. There was never an assemblage of  
17 an additional 300, there was an assemblage of  
18 approximately 2 point something billion of  
19 which we felt that 300 of it was not going to  
20 be very easy to transfer.  
21 **Q. So once you assembled that 2 point**  
22 **something billion you stopped in your search**  
23 **for additional assets; is that correct?**  
24 A. At that time that is what the  
25 entire exercise yielded. It is not that we

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1 Hraska  
2 **Q. What do you mean by the phrase**  
3 **entitled to receive in that context?**  
4 A. Entitled to receive as a result of  
5 the purchase agreement.  
6 **Q. And how does that relate, the**  
7 **concept of what they are entitled to receive**  
8 **relate to the \$1.9 billion target that we were**  
9 **talking about?**  
10 MR. SHAW: Objection to the form.  
11 A. They were entitled to receive  
12 clearance box securities as per the selection  
13 criteria. What was returned were clearance  
14 box securities for which customers had not  
15 fully paid for them.  
16 **Q. I guess my question is were they**  
17 **entitled to receive all clearance box**  
18 **securities for which customers had not paid,**  
19 **or did you think they were entitled to receive**  
20 **\$1.9 billion of such securities?**  
21 MR. SHAW: Objection. Foundation.  
22 Beyond the scope. Calls for a legal  
23 conclusion. Speaks for itself.  
24 A. I think they were entitled to  
25 receive all clearance box securities that were

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1 Hraska  
2 stopped, it was what the total result was.  
3 **Q. When did you get to this 2 point**  
4 **something billion figure?**  
5 A. Specific time?  
6 **Q. Like over the weekend?**  
7 A. Very late Sunday, I don't  
8 remember -- potentially into the hours of  
9 Monday morning. We pretty much -- I didn't  
10 sleep that whole weekend, so I don't know what  
11 point.  
12 **Q. Can you turn for a minute to your**  
13 **Exhibit 562-D which is your notes we talked**  
14 **about today?**  
15 A. Yes.  
16 **Q. In the first sentence of the**  
17 **section under topic 32-A I would like to refer**  
18 **you to that sentence which reads: Schedule B**  
19 **was referenced in the clarification letter**  
20 **representing the parties best effort based on**  
21 **the information available at the time to list**  
22 **the clearance box securities that Barclays was**  
23 **entitled to receive.**  
24 **Do you see that?**  
25 A. I do.

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1 Hraska  
2 not fully paid for.  
3 **Q. Then I guess I don't understand**  
4 **why you had a \$1.9 billion target?**  
5 A. I didn't -- I was given that  
6 target. So I testified as to where I think  
7 that target came from. As to why I had that  
8 target I honestly don't know.  
9 **Q. I understand. I guess my question**  
10 **is was the \$1.9 billion target a**  
11 **quantification of what the parties thought**  
12 **Barclays was entitled to receive, or did it**  
13 **come from some other basis?**  
14 MR. SHAW: Objection. Calls for  
15 legal conclusion. Beyond the scope of  
16 the 30(b)(6). Lack of foundation.  
17 If you know you can try to answer  
18 this in your individual capacity.  
19 **Q. If you know?**  
20 A. Can you repeat the question again.  
21 (Record read.)  
22 MR. SHAW: I would add the further  
23 objection that it is vague as to time.  
24 **Q. During that weekend?**  
25 MR. SHAW: It is still vague as to

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1  
2 UNITED STATES BANKRUPTCY COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS Case No. 08-13555(JMP)  
8 HOLDINGS, INC., et al, (Jointly Administered)  
9 Debtors.

10 -----x

11  
12 \* \* \*HIGHLY CONFIDENTIAL\* \* \*

13 DEPOSITION OF NANCY DENIG

14 New York, New York

15 August 21, 2009

16  
17 Reported by:

18 MARY F. BOWMAN, RPR, CRR

19 JOB NO. 24044  
20  
21  
22  
23  
24  
25

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NANCY DENIG,

called as a witness by the parties,  
having been duly sworn, testified as  
follows:

EXAMINATION BY

MR. HINE:

Q. Good morning, Ms. Denig. How are you?

A. Good.

Q. I introduced myself before, but my  
name is Bill Hine. I am from the firm of Jones  
Day, which is special counsel to Lehman Brothers  
Holdings, Inc. in connection with all the  
bankruptcy proceedings that are going on.

So your deposition today is in  
connection with those proceedings and some  
discovery that we are taking in those proceedings.  
Have you ever been deposed before?

A. I have not.

Q. Very simple. I am going to ask you a  
bunch of questions. You are under oath, you are  
going to give me truthful answers.

On occasion your counsel will raise an  
objection or interpose an objection. He is either  
doing that for any number of reasons, but I just

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wanted to let you know that it doesn't relieve you  
of the obligation to answer the question. You  
still have to answer the question, unless of  
course your counsel instructs you not to answer  
the question, which he may do on occasion as well.

I think all the other counsel around  
the table will introduce themselves as they get up  
to ask you questions, if they have any, but if you  
have any questions -- unless you have any  
questions, we can get started.

One point of clarification before we  
get started. I see e-mails addressed to N. Bayne.  
Is that you?

A. That is my maiden name.

Q. So if I see --

A. Unfortunately when you were at Lehman,  
when I got married -- my user profile before I got  
married was N. Bayne, which was my maiden name.  
When I got married, in order for them to change  
the user name, they would have had to delete me  
from the system altogether and I would have to  
reapply for all my applications, which I didn't  
want to do because I was already four years into  
the company, so I left my user name as N. Bayne.

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DENIG - CONFIDENTIAL

Q. If I see an e-mail addressed to  
N. Bayne at Lehman --

A. That's me.

Q. Could you tell me how long you worked  
for Lehman?

A. 15 years.

Q. So that's starting in --

A. 1994, January 20.

Q. OK. And could you kind of briefly  
walk me through the progressions of positions you  
held up until the end?

A. I started as an analyst in customer  
service, which dealt with like trade discrepancies  
for fixed income products.

Moved to P&L in the finance division,  
where I supported the repo desk for central  
funding for all types of fixed income assets.

I then took on various different  
groups throughout the life, sales support, trade  
support, P&L, structured repo, EMG, trade and  
sales support, and probably that was pretty much  
it. So I pretty much stayed on the fixed income  
side pretty much all my career.

Q. What was the last position you held?

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A. Last position, regional head for fixed  
income repo, middle office, so that was trade  
support, so we supported the traders in the daily  
transactions that they executed.

We did sales support, which also  
supported any trade confirmations, sales  
confirmations, trade discrepancies with regards to  
the salespeople.

We did -- we reported the P&L to the  
business lines, and, you know, some various little  
odds and ends, but nothing that needs to be  
clarified.

Q. Who did you report to in that  
position?

A. Jim Hraska.

Q. Any other people that you reported to  
directly?

A. No.

Q. How long have you held this position?

A. Three years of all that. I just kept  
getting more stuff added to me as my career  
progressed. So I started with one group and got  
another one, another, another, another. But  
basically all in the same business line.

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shortfall?

A. We weren't.

Q. And so what did you do then?

A. Because we basically ran out of time, the Fed and the DTC depositories ended up shutting down at a particular time and we didn't get everything that we wanted to over, because it wasn't enough time to do all the research.

Q. And you're talking about Thursday evening?

A. Thursday evening around 11 o'clock.

Q. So what was the shortfall by the time of -- by the time you ended on Thursday night?

A. I am not 100 percent sure of what the final figure was, but I want to say it was 42 billion is what they received.

Q. OK. So 42 is not the shortfall, 42 is what ultimately did make it?

A. Yeah.

Q. Was there a 7 or 8 billion dollar shortfall, do you recall?

A. Yes.

Q. Is that the genesis of what I have seen referred to as box loan?

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A. Yes.

Q. And can you tell me what that is?

A. Well, because we didn't -- we couldn't make the rest of the collateral, because of the timing, they didn't receive the value of 7 million -- 7 billion worth of collateral. So Chase lent Lehman 7 billion dollars to give back to -- to give to Barclays to make up that.

Typically you wouldn't collateralize cash with cash, but at that late hour, that was really the only way to facilitate that so that Barclays was made whole.

Q. And what secured that loan?

A. Chase. The assets that we still had in the box, that Lehman still had in the box.

Q. And the box meaning what?

A. Our free collateral box, meaning any assets that didn't get delivered over to BoNY and was still in the possession of Lehman Brothers, Inc.

Q. And is that the 074 box?

A. No, it was a Chase box.

Q. OK. 074 box is separate?

A. That's a DTC box.

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Q. I understand. OK.

So now you have gotten us through Thursday night. What did you do Friday morning or Friday during the day?

A. Well, we -- there was a lot of --

Q. I just mean Friday, the 19th of September.

A. 19th. So first thing in the morning, what we thought was pulled, that they were short collateral that we didn't finish, to try to get as much collateral that we knew was available in the DTC, because at this point the Fed collateral was all exhausted. We didn't have Treasuries, agencies. They went. They were delivered and they were reconciled with Barclays, that they received them.

The assets that we ran out of time to send were the DTC, what you referenced as 074 collateral, 636 collateral, which are the two DTC boxes that Lehman Brothers, Inc. owned.

The traders were basically using their front-end capture system to determine what the positions were that they had available and what they knew as unencumbered, and they delivered

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those via pledge mechanism to DTC, a DTC box for BoNY, which was owned technically by Barclays.

Q. And how much collateral was transferred to the BoNY box in connection with that effort?

A. A billion dollars, a billion and change.

Q. And now what was the purpose of transferring that to that BoNY box?

MR. SHAW: Objection, foundation.

A. We were under the impression we were still short market value.

Q. So that was short market value in connection with the September 18 repo?

A. Yes.

Q. So was that billion and change to substitute in for the cash that had been placed in the repo through the box loan?

MR. SHAW: Objection, foundation.

A. It wasn't my -- it wasn't my understanding, no.

Q. What did you understand it to be for?

A. It was just that BoNY said that they didn't have enough market value, you need to give

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<p>1 DENIG - CONFIDENTIAL</p> <p>2 in a search for additional unencumbered</p> <p>3 collateral; is that correct?</p> <p>4 A. That's correct.</p> <p>5 Q. Did you have an understanding of why</p> <p>6 you were looking for this additional unencumbered</p> <p>7 collateral?</p> <p>8 MR. SHAW: Objection, asked and</p> <p>9 answered.</p> <p>10 A. My impression was that we were -- we</p> <p>11 had a shortfall in the delivery of the original</p> <p>12 repo, and we were just trying to find the rest of</p> <p>13 the -- the collateral to make up the shortfall in</p> <p>14 market value.</p> <p>15 Q. Again, I am a little confused. Is the</p> <p>16 shortfall in the market value of assets that were</p> <p>17 delivered -- withdrawn. I'll try that question a</p> <p>18 better way.</p> <p>19 Can you be more specific about the</p> <p>20 shortfall in the market value of securities that</p> <p>21 were delivered that you just told me about?</p> <p>22 A. Sure. When pens went down on the end</p> <p>23 of September 18, they came back to us, and who,</p> <p>24 I'm not really sure who, but saying -- and it was</p> <p>25 communicated down to us that we were short in the</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 value, in I believe the 1.9 billion dollar range.</p> <p>3 A billion of it was transferred Friday</p> <p>4 morning, which we didn't know what the total</p> <p>5 market value of that was until Monday, the 22nd,</p> <p>6 but on Saturday, those assets were not reflected</p> <p>7 in any of the documentation that anybody had at</p> <p>8 that point, because we didn't receive the file</p> <p>9 from BoNY until Monday morning.</p> <p>10 So Saturday basically we were told to</p> <p>11 look for -- we were told, tasked to look for</p> <p>12 1.9 billion. We kept referring to a billion of it</p> <p>13 was delivered already, so we were really on the</p> <p>14 search for 900 million odd.</p> <p>15 Q. And your understanding about what you</p> <p>16 were looking for and why came from conversations</p> <p>17 with Mr. Hraska; is that correct?</p> <p>18 A. Mr. Hraska and Mr. Forrest.</p> <p>19 Q. Did anyone ever tell you, Ms. Denig,</p> <p>20 that one of the reasons that additional collateral</p> <p>21 was transferred to BoNY on Friday, the 19th, was</p> <p>22 because Lehman had had to transfer cash as part of</p> <p>23 the repo?</p> <p>24 A. I knew Lehman transferred cash as part</p> <p>25 of the repo, so I wasn't sure how that was going</p>
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<p>1 DENIG - CONFIDENTIAL</p> <p>2 to be reconciled. I thought that potentially</p> <p>3 Chase and BoNY were kind of discussing that and</p> <p>4 working that out. I wasn't sure that they -- they</p> <p>5 segregated that collateral and were going to just</p> <p>6 deliver it the very next day, if Barclays would</p> <p>7 have given us the cash -- given Chase the cash</p> <p>8 back, and then they were given collateral worth</p> <p>9 that value.</p> <p>10 I wasn't sure how they were going to</p> <p>11 make that whole or whether they were just going to</p> <p>12 leave it as cash.</p> <p>13 Q. When Mr. Hraska testified last week,</p> <p>14 he told me that the reason additional collateral</p> <p>15 was transferred on the 19th from Lehman to BoNY</p> <p>16 for the benefit of Barclays, it was with the</p> <p>17 intention of releasing some of the cash that had</p> <p>18 been pledged as part of the September 18 repo.</p> <p>19 Did Mr. Hraska ever tell that information to you?</p> <p>20 MR. SHAW: Objection, form,</p> <p>21 mischaracterizes Mr. Hraska's testimony.</p> <p>22 But you can answer the question.</p> <p>23 A. As far as my recollection was, it was</p> <p>24 to satisfy the shortfall of collateral. How that</p> <p>25 was -- the 7 billion really didn't come more clear</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 to me or people told me about it until later on,</p> <p>3 but not at that particular time, no.</p> <p>4 Q. Have you ever heard at any time that</p> <p>5 the reason additional unencumbered collateral was</p> <p>6 moved to BoNY on the Friday, the 19th, was to</p> <p>7 release the cash that had been transferred as part</p> <p>8 of the repo on the 18th?</p> <p>9 A. I did not.</p> <p>10 Q. Do you have in front of you what has</p> <p>11 previously been marked as Exhibit 237?</p> <p>12 A. Yes.</p> <p>13 Q. I am also handing you what has</p> <p>14 previously been marked as Exhibit 150B. I don't</p> <p>15 think Mr. Hine marked that this morning.</p> <p>16 You will see, Ms. Denig, that both</p> <p>17 Exhibit 237 and Exhibit 150B have attachments; is</p> <p>18 that right?</p> <p>19 A. Yes.</p> <p>20 Q. And both the attachments appeared out</p> <p>21 of the file name TRI09192008.xls?</p> <p>22 A. Yes.</p> <p>23 Q. But Exhibit 237 appears to be</p> <p>24 version 3 of a spreadsheet with that same file</p> <p>25 name; is that correct?</p>



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2 A. OK, OK.  
3 Q. Do you have any understanding of the  
4 difference between those two spreadsheets? I am  
5 obviously not expecting you to go through them  
6 line by line, CUSIP by CUSIP, but just if you  
7 could take a moment to look at them and tell me  
8 whether you have any understanding of the  
9 difference between the two, if any.  
10 A. I don't see a difference.  
11 Q. Just looking for the moment at  
12 Exhibit 237. Is that the spreadsheet that you  
13 created?  
14 A. No.  
15 Q. It appears to be sent from you to  
16 Kendall McLaughlin, William Bach and Bob Azerad?  
17 A. Correct, but I did receive it from the  
18 Magics technology team. It is either Magics or  
19 BoNY, to be honest with you. No, it was  
20 definitely Magics.  
21 Q. Can you explain what you mean by  
22 Magics?  
23 A. Magics is a front-end system that  
24 would have been the mechanism that we did the  
25 pledges. So a trader inputs the information in,

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1 DENIG - CONFIDENTIAL  
2 the fact that something, you know, was shuffled  
3 around a little bit.  
4 Q. And the market values that you see  
5 reflected on these two spreadsheets, Ms. Denig, is  
6 a market value that's assigned by Lehman, correct?  
7 A. Yes.  
8 Q. And if I understand your testimony  
9 correctly, these were CUSIPs that were transferred  
10 out from Lehman's box of DTC to BoNY for the  
11 benefit of Barclays on the 19th?  
12 A. That's correct.  
13 Q. And do you know whether or not the  
14 CUSIPs reflected in Exhibits 150B and 237 were  
15 ever returned to DTC's clearance boxes?  
16 A. I think this one asset was. I think  
17 that's why it is highlighted. I'm pretty sure my  
18 recollection is this was on the excluded list so  
19 they kicked it back. So in --  
20 Q. Just so we have a clear record --  
21 A. In Exhibit 237, you see there was this  
22 one security, the last page that's highlighted,  
23 and it is called the warrant, that's the type of  
24 product it is. Usually that was not something  
25 that you can go raise cash for. And it had a

1 DENIG - CONFIDENTIAL  
2 feeds into a trader system, feeds down to a  
3 settlement system, and then a delivery is made.  
4 So according to the front-end system,  
5 this is what the individual CUSIPs were that were  
6 sent to BoNY on the 19th, the morning of the 19th.  
7 And the market value -- where I wanted to see if  
8 it is different is that the values on the last  
9 page of both equal the same amount of money, one  
10 billion eighty.  
11 One of them is a warrant which they  
12 didn't want, so I think they ended up delivering  
13 that back. So in Exhibit 237, you see how the  
14 last page, you have a total market value of  
15 1,035,000,000, and then there is this one line  
16 that says 54 million?  
17 Q. Um-hm.  
18 A. And if you look at the file on the  
19 last page of Exhibit 150, the total value was  
20 1,090,059,000. If you add up the two, it is the  
21 same value. So I'm assuming that the information  
22 is consistent, that it reflects the same  
23 information.  
24 Q. OK.  
25 A. The different version could just be

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1 DENIG - CONFIDENTIAL  
2 market value of 54 million. I think that was on  
3 the excluded list and they did kick it back.  
4 Q. With the exception of that one warrant  
5 worth 54 million dollars, is it correct that the  
6 assets reflected in Exhibit 237 were not held in  
7 LBI's clearance boxes as of the close of business  
8 on the 19th of September?  
9 A. That's correct.  
10 Q. And is it also correct that, again  
11 with that one exception of that one line item, the  
12 54 million dollars, the assets reflected on  
13 Exhibit 237 were not at any time after close of  
14 business on September 19 ever included in LBI's  
15 clearance boxes?  
16 MR. SHAW: Objection to form,  
17 foundation.  
18 A. And I'm not 100 percent sure that  
19 there weren't other discrepancies, but as of this  
20 particular moment, when this particular file was  
21 done, this is the only one that we knew of that  
22 got kicked back. In subsequent reconciliations  
23 there could have been others.  
24 Q. Let me try it this way. As of close  
25 of business on Friday, with that one exception we

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have talked about, the CUSIPs that are reflected on 237 were not in Lehman's clearance box, correct?

A. That's correct.

Q. As of Monday morning, again with this one exception, the CUSIPs reflected on 237 were not contained in Lehman's clearance boxes, correct?

A. That's correct.

Q. Thank you. That is all I have for those documents at the moment, I think.

(Exhibit 253, document Bates stamped BCI-EX-S-00018190 through 191 marked for identification, as of this date.)

Q. Ms. Denig, you have in front of you what has been marked as Exhibit 253, which is a two-page document I'll identify for the record as bearing the Bates range BCI-EX-S-00018190 through 91.

If you'd just take a moment to familiarize yourself with that and let me know when you have finished doing so.

OK. Do you see below the -- Mr. Hraska's emoticon?

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A. Is that what it is called?

Q. I believe so. It is the first time I have had a chance to say "emoticon" on the record anywhere.

It is an e-mail from you, Ms. Denig, to John Rodefelf at Barclays, Wednesday, September 24th.

A. Yes.

Q. With a re: line "Just to summarize."

Can you explain to me the context in which you sent this e-mail to Mr. Rodefelf, please?

A. Yes. Jim asked me to follow up with the clearance folks to find out if, in fact, we did pledge this particular CUSIP to Barclays. They didn't have it on their books anywhere, and I didn't have it as a discrepancy on my reconciliation with John.

So we went to the clearance folks, who was this guy Ed Steffens. He went -- which is the original one. He said this to Jim, which is basically a reflection of what was in each box for these three CUSIPs, so he was saying 074, there was nothing in the box. In 636 we had 20 billion,

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210 in the box and nothing in the other two.

I was telling him in this e-mail that we already did pledge to him, which isn't reflected anywhere else in the e-mail, that at 70 million, 210, and that we had additional 200 -- 20 million, 210 in the box.

Q. Do you know at which point these CUSIPs were pledged to Barclays?

A. For the 70 million, 210, it was done on -- it could have been done on a combination of the 18th and the 19th, because ultimately my list ended up being combined and I only knew of one list, so I combined those as could have been delivered on either date. Though we could -- it could be looked to see where.

Q. And that answered my question with respect to the 70 million. The 20 million figure?

A. Yes.

Q. Is that the same answer? Was it pledged on either the 18th or the 19th?

A. No, it was not. It was still as of September 24 sitting in the DTC box, 22 -- 636, which is LBI's DTC box location.

Q. At any point did that CUSIP get

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transferred or pledged to Barclays?

MR. SHAW: Objection, foundation.

A. I can't be sure.

Q. To the best of your knowledge, was it ever pledged or transferred to Barclays?

A. I think so.

Q. And when do you believe it was pledged or transferred to Barclays?

A. On the 29th or the 30th.

Q. Thank you. That is all I have about that document.

(Exhibit 254, document Bates stamped BCI-EX-S-18206 with attachment marked for identification, as of this date.)

Q. Ms. Denig, I have handed you what has been marked as Exhibit 254, which is a one-page e-mail having the Bates range BCI-EX-S-00018206, and it has an attachment that was produced to us in native form, and the place holder is BCI-EX-S-00018207.

My question to you is a simple one, Ms. Denig: Do you know what this document is?

A. It looks like a dump of information that was in our DTC boxes as of 9/24 based on what

1  
2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----X

5 IN RE:

6 Chapter 11

7 LEHMAN BROTHERS Case No. 08-13555(JMP)

8 HOLDINGS, INC., et al.,

9  
10 Debtors.

11 -----X

12  
13  
14  
15 HIGHLY CONFIDENTIAL DEPOSITION OF

16 ANSON FRELINGHUYSEN

17 New York, New York

18 Thursday, March 4, 2010

19  
20  
21  
22  
23  
24 Reported by:  
JOMANNA DeROSA, CSR  
25 JOB NO. 27494

Page 2	Page 3
<p>1</p> <p>2</p> <p>3</p> <p>4 March 4, 2010</p> <p>5 9:40 a.m.</p> <p>6</p> <p>7</p> <p>8 HIGHLY CONFIDENTIAL Deposition of</p> <p>9 ANSON FRELINGHUYSEN, held at the offices of</p> <p>10 Boies Schiller &amp; Flexner, LLP, 575 Lexington</p> <p>11 Avenue, New York, New York, pursuant to</p> <p>12 Notice, before Jomanna DeRosa, a Certified</p> <p>13 Shorthand Reporter and Notary Public of the</p> <p>14 States of New York, New Jersey, California</p> <p>15 and Arizona.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1</p> <p>2 A P P E A R A N C E S:</p> <p>3</p> <p>4</p> <p>5 JONES DAY, LLP</p> <p>6 Attorneys for Lehman Brothers, Inc.</p> <p>7 222 East 41st Street</p> <p>8 New York, New York 10017-6702</p> <p>9 BY: JENNIFER L. DEL MEDICO, ESQ.</p> <p>10</p> <p>11</p> <p>12 BOIES SCHILLER &amp; FLEXNER, LLP</p> <p>13 Attorneys for Barclays</p> <p>14 5301 Wisconsin Avenue, N.W.</p> <p>15 Washington, D.C. 20015</p> <p>16 BY: JONATHAN SHAW, ESQ.</p> <p>17</p> <p>18</p> <p>19 HUGHES HUBBARD &amp; REED, LLP</p> <p>20 Attorneys for SIPA Trustee</p> <p>21 One Battery Park Plaza</p> <p>22 New York, New York 10004</p> <p>23 BY: SETH D. ROTHMAN, ESQ.</p> <p>24</p> <p>25</p>
Page 4	Page 5
<p>1</p> <p>2 A P P E A R A N C E S (Continued):</p> <p>3</p> <p>4</p> <p>5 QUINN EMANUEL URQUHART OLIVER &amp; HEDGES, LLP</p> <p>6 Attorneys for the Creditors Committee</p> <p>7 51 Madison Avenue, 22nd Floor</p> <p>8 New York, New York 10010</p> <p>9 BY: ERIC M. KAY, ESQ.</p> <p>10</p> <p>11</p> <p>12 ALSO PRESENT:</p> <p>13 JOSH LIPSON, Videographer</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL</p> <p>2 THE VIDEOGRAPHER: This is the</p> <p>3 start of tape No. 1 of the videotaped</p> <p>4 deposition of Anson Frelinghuysen in the</p> <p>5 matter In re Lehman.</p> <p>6 Today's date is March 4th, 2010, at</p> <p>7 approximately 9:40 a.m.</p> <p>8 Will the court reporter please</p> <p>9 swear in the witness.</p> <p>10 A N S O N F R E L I N G H U Y S E N, called as</p> <p>11 a witness, having been duly affirmed by a</p> <p>12 Notary Public, was examined and testified</p> <p>13 as follows:</p> <p>14 EXAMINATION BY</p> <p>15 MR. SHAW:</p> <p>16 Q. Mr. Frelinghuysen, my name is</p> <p>17 Jonathan Shaw. We met off the record a moment</p> <p>18 ago. I'm with Boies, Schiller &amp; Flexner, and I</p> <p>19 represent Barclays Capital, Inc.</p> <p>20 You're an associate of Hughes</p> <p>21 Hubbard &amp; Reed. Is that correct?</p> <p>22 A. That's correct.</p> <p>23 Q. And you were an associate of Hughes</p> <p>24 Hubbard &amp; Reed in September of 2008. Is that</p> <p>25 right?</p>

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A. I was.

Q. How long at law school were you?

A. I graduated from Brooklyn Law School in June of 2007.

Q. And you've been at Hughes Hubbard your entire career?

A. I have been.

Q. Since September 2008 you've been working on the SIPA liquidation of Lehman Brothers, Inc. Is that correct?

A. Yes.

Q. When were you first assigned to that matter?

A. I was first assigned to the Lehman Brothers, Inc. matter on September 13th.

Q. And how did you learn on September 13th that you would be working on that matter?

A. I received a call from Mr. Margolin that he would like for me to come into the office the next morning.

Q. "The next morning" being Saturday the 14th?

A. Sunday the 14th.

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Q. Sunday the 14th. Okay.

And did you get any further instruction in the course of that phone call?

A. No.

Q. Can you give me an overview of what you did in connection with that matter between starting work on September the 14th and the closing of the transaction on the morning of September 22nd.

MR. ROTHMAN: You can give him a general overview without revealing any privileged information.

A. As a first-year associate, I prepared some of the documents associated with the filing of the SIPA liquidation. I attended the district court hearing in which Lehman Brothers, Inc. was placed in liquidation. I also attended the closing of the transaction between Lehman Brothers, Inc. and Barclays.

Q. I take it, then, that you did not attend the September 19th sale hearing?

A. I was -- I was at the September 19th sale hearing before it began.

Q. And you left to go where?

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A. There were other documents that needed to be prepared in connection with the Trustee's appointment.

Q. And I take it you also did not attend the September 17th hearing?

A. I did not attend that hearing.

Q. Over the weekend following the sale hearing, did you participate in any discussions concerning the documentation of the sale transaction?

A. I did, yes.

Q. Setting aside any purely internal discussions between you and the Trustee or the Trustee's lawyers at Hughes Hubbard, tell me what discussions concerning the documentation with the transaction you were involved in.

A. Primarily I was there to discuss the signing of a multitude of signature pages for the related documents for the closing of the transaction.

Q. So that would be early on the morning of the 22nd?

A. No. Most of the signature pages were signed on Saturday, September 20th. Still

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others were signed on Sunday, September 21st.

Q. Were any signed on the morning of the 22nd?

A. If they were signed on the morning of the 22nd it would have been, you know, between midnight and 2:00 a.m. And actually, there were further documents signed later in the morning.

Q. Later in the morning of the 22nd?

A. Yes.

Q. What documents were signed later in the morning of the 22nd?

A. The services and settlement agreement was signed in the morning, as well as the DTCC letter.

Q. Were you physically present at the offices of Weil Gotshal at any time during that weekend?

A. I was -- yes, I was.

Q. How much of the weekend were you present at Weil Gotshal?

A. I was present for large portions of both Saturday, Sunday, and I was there from midnight Monday morning until about 8:00 a.m.

Q. Tell me what you were doing there.

3 (Pages 6 to 9)



Page 10	Page 11
<p>1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL</p> <p>2 A. I was monitoring the closing</p> <p>3 proceedings for the Trustee and reporting back</p> <p>4 information as necessary.</p> <p>5 Q. When you say you were "monitoring</p> <p>6 the closing proceedings," what do you mean?</p> <p>7 A. There were a number of people there</p> <p>8 discussing issues related to the closing, and I</p> <p>9 would listen to them and let other attorneys at</p> <p>10 HHR and the Trustee know what was going on.</p> <p>11 Q. And when you say "issues related to</p> <p>12 the closing," do you mean substantive issues or</p> <p>13 just logistical issues about how the documents</p> <p>14 were going to be signed, or both?</p> <p>15 A. There would be both document</p> <p>16 signing and logistical issues that really were not</p> <p>17 relevant. That was just, what does my signature</p> <p>18 block look like, you know, that kind of thing,</p> <p>19 which is not relevant.</p> <p>20 Primarily, the discussion was</p> <p>21 between Barclays and JPMorgan Chase over an issue</p> <p>22 that they were having that was holding up the</p> <p>23 closing.</p> <p>24 Q. And when were those discussions</p> <p>25 taking place?</p>	<p>1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL</p> <p>2 A. Those discussions took place all</p> <p>3 day Saturday, all day Sunday and into Monday</p> <p>4 morning.</p> <p>5 Q. Were you involved -- were there any</p> <p>6 other representatives of the Trustee at Weil</p> <p>7 Gotshal?</p> <p>8 A. Yes. Mr. Kiplok arrived around</p> <p>9 4:00 or 5:00 on Sunday the 21st.</p> <p>10 Q. 5:00 a.m. or p.m.?</p> <p>11 A. Oh, p.m.</p> <p>12 Q. And how long did he stay?</p> <p>13 A. Mr. Kiplok and I left together</p> <p>14 around 8:00 a.m. on Monday morning.</p> <p>15 Q. Why did you sign the documents</p> <p>16 rather than Mr. Kiplok or someone else more</p> <p>17 senior?</p> <p>18 A. Most of the documents were signed</p> <p>19 before Mr. Kiplok got there.</p> <p>20 Q. Apart from the -- strike that.</p> <p>21 You talked about discussions</p> <p>22 between Barclays and JPMorgan that stretched from</p> <p>23 Saturday through some point on Monday.</p> <p>24 Were you present for any portion of</p> <p>25 those discussions?</p>
Page 12	Page 13
<p>1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL</p> <p>2 A. Those discussions were behind</p> <p>3 closed doors when they were between the parties</p> <p>4 themselves, and they then made various</p> <p>5 presentations to the larger group, which I would</p> <p>6 have been present for.</p> <p>7 Q. How many such presentations do you</p> <p>8 recall?</p> <p>9 A. There were two or three or -- two</p> <p>10 or three of them.</p> <p>11 Q. And who did the presenting?</p> <p>12 A. Mr. Cox did some of the presenting,</p> <p>13 people who -- you know, I didn't know who they</p> <p>14 were at the time.</p> <p>15 Q. Representatives of JPMorgan?</p> <p>16 A. Representatives of JPMorgan,</p> <p>17 representatives of Barclays, both lawyers and</p> <p>18 business individuals.</p> <p>19 Q. What was your understanding of the</p> <p>20 substance of the issue that was being discussed</p> <p>21 between JPMorgan and Barclays?</p> <p>22 A. I understood from their discussions</p> <p>23 to have been a holdup in collateral transfers,</p> <p>24 with assets stuck at JPMorgan that were</p> <p>25 purportedly due to Barclays.</p>	<p>1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Would that be the \$7 billion?</p> <p>3 A. Yes, that's -- I recall that being</p> <p>4 one of the issues that was discussed.</p> <p>5 Q. What other issues do you recall</p> <p>6 being discussed?</p> <p>7 A. That was the primary kind of</p> <p>8 blockage that they were unable to resolve for</p> <p>9 quite some time.</p> <p>10 Q. Can you tell me anything about what</p> <p>11 was discussed during these presentations, as much</p> <p>12 detail as you can recall?</p> <p>13 A. You know, at the presentations,</p> <p>14 some of them were at the beginning where they</p> <p>15 presented the issue, and then some of them were</p> <p>16 later when they had reached a -- what they</p> <p>17 believed to be a resolution to the issue.</p> <p>18 Yes. Since they didn't necessarily</p> <p>19 affect what we were doing there, I don't remember</p> <p>20 the details of them.</p> <p>21 Q. When Mr. Kiplok was present on</p> <p>22 Sunday going through to Monday morning, what were</p> <p>23 his responsibilities as compared with your</p> <p>24 responsibilities?</p> <p>25 A. Mr. Kiplok had other -- I mean, I</p>

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1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL  
2 or late afternoon/early evening when I was told  
3 that they would not be closing that night because  
4 they were working on a few other matters,  
5 primarily what had been discussed was the  
6 JPMorgan/Barclays issue, but also he said there  
7 was this clarification letter.

8 And I said that we should probably  
9 have a copy of that.

10 Q. And what did he tell you?

11 A. He didn't give me a copy.

12 Q. Do you know if there was a copy to  
13 give you at that point?

14 A. I didn't know that.

15 Q. Did you later learn that there was  
16 a copy to give you?

17 A. I've seen documents that have, you  
18 know, earlier dates.

19 Q. You ultimately did receive various  
20 drafts of the clarification letter. Is that  
21 correct?

22 A. I did receive various drafts of it,  
23 yes.

24 Q. Over the course of the weekend?

25 A. Beginning on Sunday evening, yes.

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1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL  
2 signature pages to all the ancillary documents to  
3 the APA in order and signed in triplicate or  
4 quadruplicate as necessary.

5 Q. Anything else of significance that  
6 you did on Saturday?

7 A. No. When I left in the evening I  
8 gave my contact details to Ms. Clausen and  
9 Mr. Gruszecki in case they needed to contact me in  
10 the event that the deal would actually be able to  
11 close that night, and I could sign any of the  
12 final documents.

13 Q. What time did you leave?

14 A. I think I left at 6:30 or 7:00.

15 Q. Any additional activity that  
16 evening or that night?

17 A. Yes.

18 Q. What happened that night?

19 A. I communicated with attorneys from  
20 Hughes Hubbard.

21 Q. Did you return to Weil Gotshal on  
22 Sunday?

23 A. I did, yes.

24 Q. At what time?

25 A. I arrived later that day, probably

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1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL

2 Q. You mentioned PIK notes.

3 What do you mean by the "PIK  
4 notes"?

5 A. PIK notes are the payment-in-kind  
6 notes; that I understood the holding company moved  
7 all the subsidiaries out from underneath LBI in  
8 return for a PIK note to be valued at a later  
9 date, and that PIK note was to be delivered to the  
10 Trustee.

11 Q. Aside from the discussion you've  
12 already testified about that involved both  
13 Mr. Messineo and Ms. Fife concerning the 15c3-3  
14 account, what other discussions did you have on  
15 Saturday with Ms. Fife?

16 A. With Ms. Fife?

17 Q. Yes.

18 A. None.

19 Q. What discussions did you have with  
20 Mr. Gruszecki or Grabowski, the gentleman from  
21 Cleary Gottlieb?

22 A. That -- those conversations would  
23 have been three-way with Ms. Clausen as we  
24 discussed the signature pages. Those two  
25 associates were primarily working on getting the

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1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL  
2 between 11:00 and 12:00.

3 Q. Okay. And what did you do on  
4 Sunday?

5 A. Sunday was similar to Saturday. We  
6 re-signed some of the documents with the proper  
7 date because it was -- now another day had passed.  
8 I monitored proceedings again on behalf of the  
9 Trustee and reported back any developments.

10 Q. And when you say you "monitored"  
11 the proceedings, what proceedings are you talking  
12 about?

13 A. There were people in and out of  
14 various rooms, and I was in the hallway. I was  
15 listening.

16 Q. And what did you hear when you  
17 listened?

18 A. Primarily discussions regarding the  
19 Barclays transaction with -- and the issue with  
20 JPMorgan.

21 Q. Anything about the terms of the  
22 transaction?

23 A. The terms of the Barclays  
24 transaction?

25 MR. ROTHMAN: Which transaction?

6 (Pages 18 to 21)

1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL

2 Q. The sale transaction.

3 A. No, that was -- that was not really  
4 being discussed.

5 Q. Anything concerning the terms of  
6 the clarification letter that you were involved in  
7 discussing on Sunday?

8 A. Yes. We would have discussed the  
9 clarification letter beginning much later on  
10 Sunday night.

11 Q. And who would you have had those  
12 discussions with?

13 A. Mr. Kiplok and I went into a room  
14 with Mr. Messineo, Mr. Murgio. Both of those  
15 individuals are from Weil. Mr. McLaughlin, an  
16 attorney from Cleary Gottlieb. And there were a  
17 few other associates in both of those firms  
18 sitting in the perimeter of the office. And, you  
19 know, we reviewed the clarification letter.

20 Q. About what time did that -- did  
21 that occur?

22 A. We were in that room probably  
23 beginning around 1:00 a.m. on Monday morning  
24 through until about 6:00 or 7:00 in the morning.

25 Q. Tell me in as much detail as you

1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL

2 can what you remember about that session between  
3 1:00 a.m. and 6:00.

4 A. Primarily, Mr. Messineo or  
5 Mr. Murgio, both of whom had laptops, would make  
6 changes to the clarification letter as they were  
7 discussed between Mr. Murgio and Mr. Messineo and  
8 Mr. McLaughlin. Mr. McLaughlin would suggest  
9 various changes. Mr. Murgio would discuss it with  
10 him. They would then make or not make the change.

11 Q. Did you or Mr. Kiplok offer any  
12 input into this process?

13 A. No. We were reading along while  
14 they made suggestions to the document. We were  
15 not familiar with the document that they had been  
16 drafting together, so we, you know, let them  
17 finish it.

18 Q. Do you recall any of the  
19 substantive issues that were discussed during that  
20 meeting?

21 A. We discussed certain changes to the  
22 customer account section, which is what we  
23 primarily were focused on. The transfer of  
24 customer accounts. There was a section about some  
25 sort of insurance liability that remained after

1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL  
2 the fact and where that cash would go.

3 You know, those were the two areas  
4 I remember discussing.

5 Q. Do you remember that there was  
6 discussion about other issues; you just don't  
7 remember what it was -- or what they were?

8 A. They may have discussed other, you  
9 know, parts. Those were the ones I remember. It  
10 was five hours.

11 Q. Did you or Mr. Kiplok ask any  
12 questions during the course of that session?

13 A. I don't recall any specific  
14 questions.

15 Q. Were you excluded from any portion  
16 of the discussions?

17 A. There were a lot of different rooms  
18 in which people were having a lot of different  
19 conversations. We were not present at all  
20 conversations regarding the clarification letter.

21 Q. Did anyone ever tell you that you  
22 were not welcome at any particular discussion?

23 A. Certainly we were not welcome at  
24 the discussions between JPMorgan and Barclays.

25 Q. Any other discussions you were not

1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL  
2 welcome at?

3 A. Those people went into separate  
4 rooms to have private conferences with their  
5 attorneys with themselves, and we were not welcome  
6 at those.

7 Q. Any multilateral discussions in  
8 which you were not welcome?

9 A. Not that I know of. But people  
10 went into different rooms all the time.

11 Q. Did you attend or participate in  
12 any discussion of the terms of the DTCC letter?

13 A. I did.

14 Q. When did those discussions take  
15 place?

16 A. I believe those discussions were  
17 parallel to the clarification letter discussions,  
18 and then probably I started looking at it around  
19 6:00 in the morning.

20 Q. When you say those discussions  
21 "were parallel to the clarification letter  
22 discussions," what do you mean?

23 A. The first letter that I received  
24 was at 6:00 a.m., and it had already been written,  
25 so it had to have been written while I was working

Page 30	Page 31
<p>1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL</p> <p>2 the sale transaction over that weekend?</p> <p>3 A. I did.</p> <p>4 Q. Okay. When was that?</p> <p>5 A. There was a presentation to the</p> <p>6 larger group that had gathered at Weil Gotshal on</p> <p>7 Sunday night with various individuals from the Fed</p> <p>8 and the SEC on the phone.</p> <p>9 Q. What time Sunday night was that?</p> <p>10 A. That call remained open from about</p> <p>11 4:00 p.m. until 1:00 a.m.</p> <p>12 Q. And were you on that call</p> <p>13 constantly from 4:00 p.m. until 1:00 a.m.?</p> <p>14 A. When I was in the room in which the</p> <p>15 line was open. There was a lot of down time on</p> <p>16 that call.</p> <p>17 Q. Okay. Do you know who else was on</p> <p>18 that call for the Trustee?</p> <p>19 A. Mr. Kobak, Mr. Kiplok, the Trustee.</p> <p>20 Q. Kobak, Kiplok and the Trustee?</p> <p>21 A. You know, it's impossible to say</p> <p>22 when people were on and off the call. It lasted</p> <p>23 for a long time.</p> <p>24 MR. ROTHMAN: He was just asking</p> <p>25 you to clarify your prior answer.</p>	<p>1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL</p> <p>2 MR. SHAW: Yeah. I just wasn't --</p> <p>3 MR. ROTHMAN: It wasn't clear when</p> <p>4 you said Kobak, Kiplok, whether they were --</p> <p>5 MR. SHAW: For the Trustee or also</p> <p>6 with the Trustee.</p> <p>7 MR. ROTHMAN: -- for the Trustee or</p> <p>8 also with.</p> <p>9 A. Oh. Also with.</p> <p>10 Q. Tell me in as much detail as you</p> <p>11 can recall anything of substance discussed on that</p> <p>12 call.</p> <p>13 A. Again, the focus of that call was</p> <p>14 the Barclays/JPMorgan issue and resolution of</p> <p>15 that. The SEC and the Fed were adamant that the</p> <p>16 deal be closed before business opened on Monday</p> <p>17 and that those two parties reach a resolution so</p> <p>18 the deal as discussed on Friday night, the sale</p> <p>19 hearing, would close.</p> <p>20 And primarily they went through</p> <p>21 their resolution of the issue. And one part of</p> <p>22 that resolution that I recall was that the</p> <p>23 \$250 million of collateral that originally was</p> <p>24 going to be paid to LBI was going to be paid to --</p> <p>25 not collateral; sorry -- consideration was going</p>
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<p>1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL</p> <p>2 to be paid to DTCC.</p> <p>3 Q. What did paying the collateral to</p> <p>4 DTCC have to do with the JPMorgan/Barclays issue?</p> <p>5 A. It was consideration, not</p> <p>6 collateral.</p> <p>7 Q. Okay. What did payment of the</p> <p>8 \$250 million of consideration to DTCC have to do</p> <p>9 with the JPMorgan/Barclays issue?</p> <p>10 A. I don't know.</p> <p>11 Q. But your understanding was it was</p> <p>12 somehow related to that?</p> <p>13 A. I understand if the</p> <p>14 JPMorgan/Barclays issue was holding up the</p> <p>15 transaction, that there would be some relation.</p> <p>16 Q. You said a moment ago that the SEC</p> <p>17 and the Fed were adamant that the deal be closed</p> <p>18 before business opened on Monday.</p> <p>19 What's your basis for saying that?</p> <p>20 A. I recall voices on the telephone</p> <p>21 saying, Please resolve this issue before the</p> <p>22 markets open on Monday.</p> <p>23 Q. Anything else?</p> <p>24 A. Not that I recall specifically.</p> <p>25 Q. Do you recall anything else about</p>	<p>1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL</p> <p>2 what was discussed on that call that was open from</p> <p>3 about 4:00 p.m. until about 1:00 a.m.?</p> <p>4 A. No, not in detail.</p> <p>5 Q. Approximately how much of that call</p> <p>6 were you present for between 4:00 p.m. and</p> <p>7 1:00 a.m.?</p> <p>8 A. Between 4:00 p.m. and 1:00 a.m. the</p> <p>9 call was probably active for two and a half to</p> <p>10 three hours, and I was probably present for all of</p> <p>11 the active moments of it.</p> <p>12 Q. And what were you doing when it was</p> <p>13 inactive?</p> <p>14 A. We had various side conversations</p> <p>15 with Hughes Hubbard attorneys, and we had -- that</p> <p>16 was pretty much it.</p> <p>17 Q. Did you or any other representative</p> <p>18 of the Trustee request any changes to any of the</p> <p>19 deal documents over the course of that weekend?</p> <p>20 A. Yeah. We had a lot of changes to</p> <p>21 the signature blocks of the documents. The DTCC</p> <p>22 letter we did have some substantive changes to.</p> <p>23 Q. You did or you did not have?</p> <p>24 A. Did, positive.</p> <p>25 Q. Okay. What substantive changes did</p>

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<p>1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL</p> <p>2 the Trustee request in the DTCC letter?</p> <p>3 A. I don't recall what they were. I</p> <p>4 just remember that there were other discussions</p> <p>5 going on.</p> <p>6 Q. And you requested changes.</p> <p>7 Were those changes made?</p> <p>8 A. I don't know.</p> <p>9 Q. Who requested the changes on behalf</p> <p>10 of the Trustee?</p> <p>11 A. Mr. Kobak and Mr. Kiplok.</p> <p>12 Q. And you don't recall what any of</p> <p>13 those requested changes were?</p> <p>14 A. Not at this time.</p> <p>15 Q. And you don't know whether the</p> <p>16 changes that were requested, whatever they were,</p> <p>17 were actually incorporated in the final letter; do</p> <p>18 you?</p> <p>19 A. If we signed the letter, they must</p> <p>20 have been acceptable to us.</p> <p>21 MR. ROTHMAN: Well, don't guess.</p> <p>22 A. No, I don't know what the changes</p> <p>23 were and whether they were incorporated.</p> <p>24 Q. Do you know whether any requests</p> <p>25 for changes were made orally or in writing?</p>	<p>1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL</p> <p>2 A. Do you mean via e-mail?</p> <p>3 Q. E-mail, somebody marking up an</p> <p>4 agreement; anything like that?</p> <p>5 A. You know, we were not physically</p> <p>6 present with DTC attorneys or themselves, so I</p> <p>7 would -- my recollection is that they would be</p> <p>8 oral requests.</p> <p>9 Q. And you were not personally</p> <p>10 involved in any discussions concerning the</p> <p>11 contents of the DTCC letter. Is that right?</p> <p>12 A. Not with DTCC, no.</p> <p>13 Q. With anyone other than internally</p> <p>14 at Hughes, Hubbard &amp; Reed?</p> <p>15 A. My discussions about the DTCC</p> <p>16 letter were with Mr. Kiplok.</p> <p>17 Q. Did the Trustee -- aside from</p> <p>18 changes you've mentioned to the signature block,</p> <p>19 perhaps, did the Trustee or any of its</p> <p>20 representatives request changes to the</p> <p>21 clarification letter at any time?</p> <p>22 A. I don't know what they did.</p> <p>23 Q. You're not aware of it if they did?</p> <p>24 A. I'm not aware of anything else than</p> <p>25 what I was there for on Monday morning.</p>
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<p>1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. While you were there over the</p> <p>3 weekend, did anyone ever state or suggest the deal</p> <p>4 as documented in the final version of the</p> <p>5 clarification letter had not been approved by the</p> <p>6 Court?</p> <p>7 A. My understanding of the deal</p> <p>8 documents was that they reflected what had been</p> <p>9 presented to the Court on Friday night, and that</p> <p>10 the reason that I was signing was because no</p> <p>11 substantive changes were being made.</p> <p>12 MR. SHAW: I'll show you what's</p> <p>13 been previously marked as Exhibit 25 in this</p> <p>14 case.</p> <p>15 Q. I'm just going to ask if you</p> <p>16 recognize that as the clarification letter that</p> <p>17 you signed on the Trustee's behalf?</p> <p>18 MR. ROTHMAN: Objection to the</p> <p>19 form.</p> <p>20 Q. Do you recognize that document?</p> <p>21 A. I do recognize this document.</p> <p>22 Q. Did you -- and what is the document</p> <p>23 you recognize?</p> <p>24 A. The document appears to be the</p> <p>25 clarification letter.</p>	<p>1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. And did you sign the clarification</p> <p>3 letter?</p> <p>4 A. I signed the signature page that's</p> <p>5 attached to this letter, yes.</p> <p>6 Q. Okay. And you did so on behalf of</p> <p>7 the -- of James Giddens, Trustee for the SIPA</p> <p>8 liquidation of Lehman Brothers, Inc.?</p> <p>9 A. That's correct.</p> <p>10 Q. When did you sign that signature</p> <p>11 page?</p> <p>12 A. I signed the signature page on the</p> <p>13 late evening of Sunday, September 21st or in the</p> <p>14 early morning of September 22nd, probably before</p> <p>15 1:00 or 2:00 a.m.</p> <p>16 Q. And where were you physically when</p> <p>17 you signed that page?</p> <p>18 A. I believe at this point for the</p> <p>19 signing of this one, I went to some internal</p> <p>20 office at Weil Gotshal where Mr. Gruszecki and</p> <p>21 Ms. Clausen had been set up once the larger office</p> <p>22 they had been using had been taken for other</p> <p>23 purposes. That was the room where all the</p> <p>24 signature pages were being kept in those accordion</p> <p>25 files.</p>



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Q. And when they gave it to you to sign, was there just a signature page or was there an agreement attached to the signature page when you were signing it?

A. It was just the signature page; no agreement.

Q. Was there at some point any further authorization you were required to give before they could use the signature page that you signed?

A. The deal was closed around 8:00 a.m. on Monday morning when the signature pages were released by the various parties.

Q. And how was -- how was the -- how were the signature pages that you signed released by the Trustee?

A. We were in another conference room at Weil Gotshal, and all the documents had been signed and reached and the funds transferred.

Q. Let me unpack that for a moment. You were in a conference room at Weil Gotshal at around 8:00 a.m. Monday morning. Is that correct?

A. That's correct.

Q. And who else was in this conference

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room?

A. More people than I could remember or describe. It was not the larger conference room. It was kind of small, and it was full.

Q. Representatives of Barclays?

A. There were representatives of Barclays, of JPMorgan, of -- you know, there were Cleary lawyers, Weil lawyers, Shearman lawyers; a lot of people.

Q. Anyone for the creditors committee?

A. I recall that there were members of the creditors committee there during the course of -- earlier in the evening. I assumed they didn't go home.

Q. And so you're in this room with representatives of various parties.

And did they have final versions of all the contract documents?

A. No, not at all.

Q. So how was it that the documents were -- or that the signature pages were released?

I mean, did a representative, for example, of the Trustee say, "Okay, our signature pages are now released," or what happened?

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A. I don't actually recall that moment, but --

Q. But in some way, was it you or some other representative of the Trustee indicated that it was okay to release the signature pages?

A. I didn't.

Q. Do you know who did?

A. No, I can't recall.

Q. Had you read a final version of the clarification letter at that point?

A. I had seen drafts of the clarification letter and had read what I thought was the final version, yes.

Q. And when you say "what I thought was the final version," do you still believe that was the final version that you read?

A. I assumed there were no changes made after we wrapped up.

Q. If you'd take a look at the first page of Exhibit 25, and particularly the paragraph that is at the bottom of that page, No. 1(a)(ii).

Do you see that?

A. Yes, I see that paragraph, yes.

Q. And you'll see that that paragraph

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references a Schedule A and a Schedule B.

Do you see that?

A. I do see the references to Schedule A and Schedule B.

Q. Had you seen those references prior to signing this?

A. Had I seen those references?

Q. Yes.

A. Yes, I had.

Q. Did you make any effort to examine Schedule A or Schedule B?

A. These schedules were never delivered to us for review.

Q. When you say they were not "delivered to us for review," do you mean they were never delivered to the Trustee for review?

A. That's -- I never received a copy of them.

Q. And when you say "never," I take it you mean that weekend?

A. That's correct.

Q. Do you know whether anyone else, a representative of the Trustee, ever received a copy of those this weekend -- that weekend?

11 (Pages 38 to 41)

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2 A. I don't know what other people

3 received.

4 Q. Do you know if anyone representing

5 the Trustee ever asked for copies of either

6 Schedule A or Schedule B?

7 A. I did not.

8 Q. And you don't know whether anyone

9 else did?

10 A. I don't know.

11 Q. Are you aware that final versions

12 of Schedule A and Schedule B were filed with the

13 Court on September 30th, 2008?

14 A. I'm -- am I aware of that?

15 Q. Yes.

16 A. No.

17 Q. Did you ever have occasion to

18 review the final filed versions of Schedule A or

19 Schedule B?

20 A. I have seen them.

21 Q. In what context?

22 A. As .pdf documents.

23 Q. When approximately did you see

24 them?

25 A. At some point in the months

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2 preparation of those final versions of Schedule A

3 and Schedule B?

4 A. I do not know.

5 Q. Other than the Trustee and his

6 counsel, have you ever discussed the preparation

7 or contents of Schedule A or Schedule B with

8 anyone?

9 A. No.

10 Q. Are the terms "636 box" and

11 "074 box" familiar to you?

12 A. I don't normally refer to them that

13 way.

14 Q. Okay.

15 MR. ROTHMAN: That wasn't what he

16 asked you, but go ahead.

17 Q. If I were to say the 636 box, what

18 would your understanding of that be?

19 A. The DTCC participant account of

20 LBI's.

21 Q. Okay. And the 074 box, what would

22 your understanding of that be?

23 A. It's another participant account

24 member of LBI's.

25 Q. At the DTCC?

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2 following.

3 Q. And for what purpose were you

4 looking at them?

5 A. To transmit them. They -- I was

6 just passing through. They weren't really

7 something that I could read.

8 Q. To whom did you transmit them?

9 A. To Deloitte.

10 Q. And when you transmitted them to

11 Deloitte, did you transmit them with any

12 instruction?

13 MR. ROTHMAN: That's a yes-or-no

14 question.

15 A. No.

16 Q. Were you involved in the process of

17 preparing those final versions of Schedule A and

18 Schedule B?

19 A. No.

20 Q. Do you know if any representative

21 of the Trustee was involved in preparing the final

22 versions of Schedule A or Schedule B?

23 A. I do not know.

24 Q. Do you know if anyone representing

25 the Trustee ever requested to be involved in the

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2 A. At DTCC.

3 Q. When did you learn that?

4 A. I learned that on Monday,

5 September 22nd or Tuesday, September 23rd.

6 Q. And how did you come to learn that?

7 A. I began the process of the customer

8 account transfers which involved the transfer of

9 assets to the benefit of those customers, and the

10 assets had to transfer through DTC.

11 Q. And did someone explain to you what

12 the 636 and 074 boxes were?

13 A. Yes.

14 Q. Who would that be?

15 A. Mr. Ullman at Lehman Brothers,

16 Inc., who became a Barclays Capital employee.

17 Q. Do you know when Mr. Ullman became

18 a Barclays Capital employee?

19 A. I assume he became a Barclays

20 Capital employee the moment that the transaction

21 changed.

22 MR. SHAW: Can we take a short

23 break. This is a logical stopping point.

24 THE VIDEOGRAPHER: The time is

25 10:29. We are going off the record.

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1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL  
2 (Recess taken.)  
3 THE VIDEOGRAPHER: The time is  
4 10:40. We are back on the record.  
5 Q. Mr. Frelinghuysen, could you please  
6 give me an overview of what you did in connection  
7 with this matter between the closing and the end  
8 of September 2008.  
9 A. Between the closing on  
10 September 22nd through the end of September 2008,  
11 I was -- I worked primarily on the transfer of  
12 customer assets to Neuberger Berman, Barclays and  
13 Prime Brokerage.  
14 Q. Anything else?  
15 A. I worked on various other kind of  
16 administrative matters within, you know, the  
17 liquidation.  
18 Q. And what was entailed by the  
19 transfer of customer assets to Neuberger Berman,  
20 Barclays and the Prime Brokerage?  
21 A. Primarily it involved authorization  
22 to DTC to transfer customer assets from LBI's  
23 accounts at DTC to accounts -- other participant  
24 accounts at DTC, Barclays, Ridge, or whomever the  
25 Prime Brokerage people designated.

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2 entity you were interacting with?  
3 MR. ROTHMAN: Objection to the  
4 form.  
5 A. The purpose remained to have  
6 custodial banks, such as DTC or any of the others  
7 around the world, transfer customer assets as  
8 needed.  
9 Q. And in order to accomplish these  
10 asset transfers, did you understand that you had  
11 been invested with some measure of authority to  
12 act on the Trustee's behalf in his dealings -- or  
13 in your dealings with these custodial entities?  
14 A. Yes.  
15 Q. And what did you understand the  
16 scope of the authority you had been given to be?  
17 A. That I should encourage or instruct  
18 the banks to transfer LBI's assets that were  
19 related to customers as necessary.  
20 Q. Do you understand yourself to have  
21 more or less -- strike that.  
22 Did you understand yourself to have  
23 more, less or the same authority in dealing with,  
24 say, JPMorgan as you did in dealing with the DTC  
25 or the OCC?

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2 Q. And you had other responsibilities  
3 as well over the course of that week or so. Is  
4 that correct?  
5 A. I worked on some other matters,  
6 yes.  
7 Q. Were you involved with approving  
8 payments from the LBI estate?  
9 A. "Approving payments"? I'm not  
10 sure --  
11 MR. ROTHMAN: Objection to the  
12 form.  
13 A. I don't know what that means.  
14 Q. Were the request -- strike that.  
15 What did you understand the limits  
16 on your authority to act for the Trustee were?  
17 A. I was --  
18 MR. ROTHMAN: Objection to the  
19 form.  
20 Q. You can answer.  
21 A. I was there to transfer customer  
22 assets and to facilitate those movements through  
23 the holders of those securities.  
24 Q. In your understanding, did the  
25 scope of your authority differ depending on which

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1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL  
2 MR. ROTHMAN: Objection to the  
3 form.  
4 A. My authority with the DTC and JPMC  
5 with respect to LBI's accounts at those banks  
6 where customer assets were stored was identical.  
7 Q. You were on site in Jersey -- at  
8 Lehman Brothers' Jersey City facility for much of  
9 that period. Is that right?  
10 A. It's been -- yes. I was at  
11 70 Hudson Street.  
12 Q. Okay. Was Mr. Kiplok there as  
13 well?  
14 A. No, he was not.  
15 Q. Were there any other  
16 representatives of the Trustee on site in  
17 Jersey City?  
18 A. In what time period?  
19 Q. Between closing and the end of  
20 September.  
21 A. No.  
22 Q. Were there any other  
23 representatives of the Trustee who were involved  
24 in authorizing the transfers of assets from the  
25 DTC and OCC and JPMorgan custodial accounts during

1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL  
2 that time period?

3 A. There were.

4 Q. Who were they?

5 A. Mr. Kiplok.

6 Q. How were responsibilities allocated  
7 between you and Mr. Kiplok during that period?

8 A. I worked most entirely with DTCC  
9 and with JPMC after Mr. Kiplok had established  
10 those channels of dealings.

11 Q. And he had responsibility for what,  
12 as you understood it?

13 A. He did the JPMC transfers  
14 initially, and I took over for those since I was  
15 located at the operations center. And that's it.

16 Q. How much supervision did you  
17 receive from more senior lawyers or other  
18 representatives of the Trustee during that week?

19 MR. ROTHMAN: Objection to the  
20 form.

21 Q. You can answer.

22 A. I received general instruction to  
23 transfer customer assets as they were presented to  
24 me.

25 Q. One of the responsibilities you had

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2 that week was to determine if proposed transfers  
3 of assets should be authorized by the Trustee or  
4 denied. Correct?

5 A. My role was to assure that the  
6 assets that Barclays' personnel were asking be  
7 transferred got transferred to the extent they  
8 were customer assets.

9 Q. When you say to the extent that  
10 they were customer assets, who -- strike that.  
11 Who gave you your instructions  
12 about what your role was?

13 A. About what my role was?

14 Q. Yes.

15 A. Hughes Hubbard attorneys.

16 Q. Which Hughes Hubbard attorneys  
17 particularly?

18 A. Mr. Kobak, Mr. Kiplok and the  
19 Trustee.

20 Q. As exactly as possible, what were  
21 you told was your role?

22 MR. ROTHMAN: I instruct you not to  
23 answer that question.

24 Q. In deciding which transfers to  
25 approve and which to deny approval to, how did

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2 you -- how did you do that?

3 MR. ROTHMAN: Again, you can give a  
4 general idea, but please don't reveal any  
5 privileged communications you may have had  
6 with other lawyers at Hughes Hubbard or with  
7 the Trustee.

8 A. Okay. I instructed Mr. Ullman that  
9 when he had a request for me to transfer assets,  
10 that he had to state where they were going and for  
11 what purpose, and that that purpose needed to be a  
12 customer transfer.

13 Q. When did you have this discussion  
14 with Mr. Ullman?

15 A. That discussion would have taken  
16 place on September 23rd, which is a Tuesday.

17 Q. What time on September 23rd?

18 A. I believe I arrived at his offices  
19 at the 70 Hudson location around 11:00 a.m. We  
20 had numerous conferences throughout the day going  
21 over, you know, what needed to be done, how it  
22 would be done. And in the course of those  
23 conversations, that discussion happened.

24 Q. When in the course of those  
25 discussions did that conversation happen?

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2 A. It would have happened multiple  
3 times in the course of that conversation.

4 Q. And tell me as exactly as you can  
5 precisely what you instructed Mr. Ullman with  
6 respect to -- with respect to requesting transfers  
7 of assets.

8 A. That I needed appropriate  
9 instructions as to where the assets would be going  
10 and where they would be coming from. I needed  
11 appropriate contact information. I needed  
12 confirmation from him that those assets were  
13 related to customers.

14 Q. What were your exact words to  
15 Mr. Ullman?

16 A. I don't recall.

17 Q. Did you put any of these  
18 instructions in writing?

19 A. Not to Mr. Ullman.

20 Q. To anyone?

21 A. On certain occasions where I  
22 received instructions that did not match what I  
23 needed to have them, I would refuse the  
24 instructions and address the short-falling.

25 Q. Do you recall any specific examples

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2 of situations like that?  
3 A. I do not. I just recall that it  
4 happened more than once.  
5 Q. With Mr. Ullman or with others?  
6 A. With Mr. Ullman or any of his  
7 personnel working for him.  
8 Q. And who were the personnel working  
9 for him that you're thinking of?  
10 A. My primary people with whom I  
11 worked on those customer account transfers and the  
12 transfer of customer assets would have been  
13 Mr. Fondacaro, Mr. Gallagher and Mr. Borzi.  
14 Mr. Crispino was -- worked for them and was also  
15 involved.  
16 Q. What about Laura Vecchio; did you  
17 have any contact with her during that period of  
18 time?  
19 A. I did.  
20 Q. And what was your contact with her?  
21 A. Ms. Vecchio was assisting to  
22 coordinate some of the operations.  
23 Q. And did you understand her to be a  
24 Barclays employee?  
25 A. Yes.

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2 Trustee authorize the transfer of PIM Plant  
3 Securities from LBI's 074 box to Barclays 229 box?  
4 A. I do not see the word "box," but I  
5 understand it to be a request to move PIM customer  
6 assets from LBI's participant account 074 to  
7 Barclays' participant account.  
8 Q. Take a look at the next e-mail in  
9 the chain.  
10 Does that indicate to you that at  
11 about 13 minutes after receiving that request that  
12 you forwarded that e-mail, along with the  
13 Trustee's authorization, to the DTCC?  
14 A. Yes. This shows that I forwarded  
15 it to various attorneys and operations personnel  
16 at DTCC with the Trustee's authorization.  
17 Q. How did you decide it was  
18 appropriate to authorize that transfer?  
19 A. This transfer in particular had  
20 been discussed offline and in very close detail  
21 with Mr. Borzi and Mr. Ullman, so I was expecting  
22 it.  
23 And also, it had the appropriate  
24 language from Mr. Borzi to me, stating that it was  
25 customer assets going to Barclays, and that the

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2 Q. A former Lehman person who became a  
3 Barclays employee effective with the closing.  
4 Is that your understanding?  
5 A. That was -- my understanding is  
6 that she was -- that that was her position, yes.  
7 (Exhibit 669-B marked for  
8 identification.)  
9 MR. SHAW: I'm showing you what's  
10 been marked as Exhibit 669-B.  
11 Q. Take a moment to look at it and  
12 then tell me if you recognize this as a  
13 September 26th, 2008, e-mail chain, parts of which  
14 you wrote and parts of which were addressed to  
15 you.  
16 A. What was your question?  
17 Q. Sure. Do you recognize this as a  
18 September 26th, 2008, e-mail -- or e-mail chain,  
19 rather, parts of which you wrote and parts of  
20 which -- of which were addressed to you?  
21 A. Yes, I do recognize it as that.  
22 Q. Okay. If you take a look at the  
23 earliest e-mail in the chain, that is, the first  
24 chronologically, do you recognize that as an  
25 e-mail to you from Mr. Borzi, requesting that the

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2 PIM business was the business of -- that I had  
3 known Barclays to have acquired.  
4 Q. When we talk about customer assets,  
5 there were PIM customer assets, there were PAM  
6 customer assets, P-A-M, and there were Prime  
7 Brokerage assets. Is that correct?  
8 A. Those are some of the classes of  
9 assets.  
10 Q. Okay. What other customer assets  
11 were you involved -- what other classes of  
12 customer assets were you involved in transferring  
13 during that period of time?  
14 A. We only would have done PIM and  
15 PAM, and PB didn't actually start until October.  
16 Q. Okay. So when you talk about  
17 customer assets, at least in that time period,  
18 you're talking about the PIM and the PAM assets?  
19 A. That's correct.  
20 Q. Take a look at the most recent  
21 e-mail in the string on Exhibit 669-B. You  
22 thanked Mr. Borzi for the clarity and precision of  
23 his instructing e-mail.  
24 What specifically were you  
25 commenting on?



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A. Mr. Borzi had included references that I had specifically asked him to include, such as which participant account number it was going to, that it was related to PIM clients and customers. That's it.

Q. And so it was important to you that Mr. Borzi specify that the assets to be transferred were PIM customer assets. Is that right?

A. Yes, and that they were being transferred in connection with Barclays' purchase of the PIM customers under --

Q. Okay. And if I understand you correctly, when transfers of customer assets were requested, you required that the assets be identified as customer assets. Is that right?

A. Well, my understanding was that only customer assets were being transferred.

Q. Where did you get that understanding from, sir?

A. That's what I understood the transaction to include. And certainly that's all I understood to be going on in those first couple of weeks.

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A. Based on the information and the representation from the Lehman/Barclays employee.

Q. In connection with any request for the transfer of assets, was anyone from Barclays ever dishonest with you?

MR. ROTHMAN: Objection to the form.

A. Was anyone ever dishonest with me?

Q. Do you believe that anyone from Barclays ever lied to you or attempted to mislead you about the transfer of any assets?

MR. ROTHMAN: Same objection.

A. I would have always understood them to be asking that I transfer customer assets.

Q. That's not responsive to my question, sir.

My question was: In connection with any requests for transfers of assets, do you believe that anyone from Barclays was ever dishonest with you?

MR. ROTHMAN: Same objection.

A. No.

Q. Did you communicate with Alastair Blackwell concerning any asset transfers during

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Q. Did you consult on the transfers of any assets with more senior attorneys at Hughes Hubbard & Reed or other representatives of the Trustee?

A. Yes.

Q. With whom did you consult during that period of time?

A. Mr. Kobak, Mr. Kiplok.

Q. Anyone else?

A. At Hughes Hubbard?

Q. At Hughes Hubbard or anyone else representing the Trustee.

A. No.

Q. To the best of your recollection, did requests that you authorize the transfer of customer assets always specify that the assets in question were customer assets?

A. Requests to me?

Q. Yes.

A. No, they very often did not, and I wouldn't approve them.

Q. Okay. How did -- when you received such a request, how did you verify that the assets requested were actually customer assets?

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September 2008?

A. I did.

Q. Who was Mr. Blackwell, sir?

Or who -- rather, who did you understand Mr. Blackwell to be?

A. I understood Mr. Blackwell to be the head of global operations of Barclays.

Q. A former Lehmanite?

A. I actually wasn't clear on that.

Q. How many times did you discuss the transfer of assets with Mr. Blackwell in September 2008?

A. It's hard to say when in September -- you know, a number of times.

Q. Tell me about any specific discussions you recall having with Mr. Blackwell about the transfer of assets.

A. I recall a specific discussion the first week after the closing with Mr. Blackwell.

Q. One discussion or more than one discussion?

A. One discussion with him in his office, or an office he was using, followed up by some phone calls.

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Q. So was this in Jersey City?

A. This was in Jersey City.

Q. Do you recall when during the week your discussion with Mr. Blackwell took place?

A. I think that it must have been a Thursday.

Q. Thursday the --

A. It should have been the 25th.

Q. The 25th.

Tell me everything you remember about that discussion.

A. Mr. Blackwell and I discussed the customer transfers that were ongoing and that we were in the process of completing for PIM and PAM. We discussed some other customer transactions and that there was an additional transfer of assets that needed to occur that valued around \$1 billion.

Q. And what did you understand that \$1 billion in assets to be?

A. I don't recall what he said it was.

Q. Well, do you recall what you thought it was?

A. No.

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Q. Do you do it daily?

A. I keep daily track of my time. I sometimes catch up at the end of the week.

Q. Was that true in September of 2008 that you were keeping daily track of your time?

A. Yes.

Q. Is it fair to say that you attempted to record your time accurately?

A. Yes.

Q. And that's at least in part because you understood that your time entries would ultimately be submitted to the Court in connection with Hughes Hubbard's fee submission. Is that correct?

A. That is correct.

(Exhibit 670-B marked for identification.)

MR. SHAW: I'm showing you what has been marked as Exhibit 670-B. I will represent to you that this is an excerpt from a much larger document submitted by Hughes Hubbard & Reed in connection with its request for fees for the period from September 13, 2008, through January 31st, 2009.

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Q. How long did that discussion in an office in Jersey City last?

A. Around half an hour probably.

Q. Can you recall anything else about the discussion?

A. No.

Q. Can you recall anything else about the approximately \$1 billion in other assets that you discussed with Mr. Blackwell?

A. He never asked me to transfer it.

Q. What did he ask you?

A. He asked me what steps would be necessary to transfer it.

And I said I would get back to him.

Q. And did you get back to him?

A. I did.

Q. And what did you tell him?

A. I drafted him a representation from him that the assets were appropriate to transfer, and he never responded.

Q. Did you record your time on this case?

A. As a matter of course, I record my time.

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Q. Are you aware that such a submission was made?

A. I am aware of that submission, yes.

MR. ROTHMAN: Just for the record, it's a three-page document. The first page appears to be a cover page, and then it has pages 46 and 47.

Q. If you'll take a look at the entry that appears at the bottom of page 46 and carries onto the top of page 47 of this document.

Do you recognize that as a description of your time for September 24th, 2008?

A. Yes, I do recognize it as that.

Q. And do you believe that that time is -- that is recorded there -- or that the entry that's recorded there is as you wrote it?

A. I have no reason to believe it's not.

Q. Do you have any reason to believe that that entry is inaccurate?

A. No, I do not.

Q. The first part of that entry discusses the PAM customer accounts. Is that correct?

17 (Pages 62 to 65)

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And when I say "part," I'm referring to the segments that end with a number in parentheses and a semicolon.

A. Yeah. The first part of the entry that ends with a number on page 47 is with respect to PAM transfers.

Q. And what were the PAM customer accounts?

A. The PAM customer accounts were the private asset management customer accounts that were transferred to Ridge as the new broker-dealer for Neuberger Berman.

Q. And if you look at the second and third portions of the entry for that date, you'll see that they talk about PIM transfers. Is that correct?

A. That is correct. They do talk about PIM transfers.

Q. Okay. And what did you mean by "PIM transfers"?

A. PIM transfers was the private investment management business of Lehman Brothers, Inc. that was purchased by Barclays.

Q. And then the fourth section talks

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about what appears to be a three-hour discussion with David Aronow concerning PB accounts.

What did you mean by "PB accounts"?

A. Those were the prime brokerage accounts.

Q. And what did you talk about with Mr. Aronow about the transfer of prime brokerage accounts?

A. We had been discussing in the -- in the course of the day how to gather assets related to customers to effectuate their transfer to a new broker-dealer.

Most of the PIM customers were relatively simple accounts. PB accounts hold a lot of other financial products and have more complicated trading arrangements. We were trying to figure out a way operationally to move those accounts and their assets.

Q. And then the final section of your time entry talks about a discussion with A. Blackwell Re: Transfer of other LBI assets in relation to asset purchase agreement. Is that correct?

A. That is correct.

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Q. And when you wrote about other assets, you're referring to the \$1 billion of other assets that Mr. Blackwell had discussed with you?

A. Yes. It appears that conversation was on the 24th.

Q. And when you write "other" assets, that's to distinguish it from the PAM, PIM and prime brokerage assets that are discussed in earlier sections of your time entry. Is that correct?

A. Yes.

Q. Does this refresh your recollection that what you discussed with Mr. Blackwell is the transfer of the remaining clearance box assets pursuant to the clarification letter?

MR. ROTHMAN: Objection to the form.

A. This is -- reflects my recollection that Mr. Blackwell was requesting assets -- requesting transfer of non-customer assets.

Q. And the assets he was requesting were assets in the 636 and 074 box. Is that correct?

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A. He did not disclose to me which assets they were; only their value.

Q. Now having read your time entry for the 24th, do you have any further recollection of your conversation with Mr. Blackwell on this topic?

A. Nothing further to what was just discussed.

Q. And after your discussion with Mr. Blackwell, what did you do with respect to his request concerning the transfer of those assets?

MR. ROTHMAN: Object -- go ahead.

Objection. Asked and answered.

You can answer again.

A. I contacted other -- I contacted other attorneys at Hughes Hubbard.

Q. And who specifically did you contact?

A. Mr. Kobak, Mr. Kiplok.  
(Exhibit 671-B marked for identification.)

Q. If you would look at what has been marked as Exhibit 671-B.

Have you had a chance to look at

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2 it?  
3 A. I have reviewed this document, yes.  
4 Q. Do you recognize that as an e-mail  
5 that you wrote to Mr. Blackwell on the 25th of  
6 September, 2008?  
7 A. Yes, I do.  
8 Q. And you copied Mr. Giddens,  
9 Mr. Kobak and Mr. Kiplok on that e-mail. Is that  
10 correct?  
11 A. That's correct.  
12 Q. And why did you copy them  
13 particularly?  
14 A. I copied my supervisors on a  
15 regular basis.  
16 Q. Okay. And you had discussed this  
17 issue between your conversation with  
18 Mr. Blackwell -- strike that.  
19 Between your conversation with  
20 Mr. Blackwell on the 24th and the time you sent  
21 this e-mail on the 25th, you had discussed this  
22 with at least Mr. Kobak and Mr. Kiplok. Is that  
23 right?  
24 A. That's correct.  
25 Q. Had you run a draft of this past

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2 Q. And when you say "discussed  
3 earlier," you're referring to the discussions  
4 shown on your time records for the 24th. Right?  
5 A. Yes, that's correct.  
6 Q. And why did you need that letter?  
7 A. Because he had stated that they  
8 were due as part of the asset purchase agreement,  
9 and we were going to be basing that movement on  
10 his representation.  
11 Q. And you didn't request a similar  
12 letter when Mr. Borzi asked you to authorize  
13 transfer of pending client securities; did you?  
14 A. No.  
15 Q. Why did you request a letter from  
16 Mr. Blackwell in connection with the transfer you  
17 discussed with him, but didn't request a similar  
18 letter from Mr. Borzi in connection with the  
19 earlier transfer we looked at?  
20 MR. ROTHMAN: Objection to the  
21 form.  
22 A. The nature of the transfer was  
23 different.  
24 Q. In what -- I'm sorry. Go ahead.  
25 A. The customer transfers had been

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2 them?  
3 MR. ROTHMAN: I'm going to instruct  
4 him not to answer that question. I think  
5 you're getting into the privilege.  
6 Q. Attached to this e-mail is a letter  
7 that you sent to Mr. Blackwell which he would need  
8 to submit before the Trustee would:  
9 "... authorize the movement of the  
10 positions discussed earlier that are due as part  
11 of the LBI/Barclays transaction."  
12 Is that right?  
13 A. It says:  
14 "... which were sold to Barclays  
15 Capital pursuant to the asset purchase."  
16 Q. I was actually quoting from your  
17 e-mail. Sorry. I asked a confusing question.  
18 Let me start again.  
19 You sent Mr. Blackwell a letter  
20 that he needed to submit before the Trustee would:  
21 "... authorize the movement of the  
22 positions discussed earlier that are due as part  
23 of the LBI/Barclays transaction."  
24 Is that correct?  
25 A. That's correct.

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2 discussed between me and Mr. Borzi, Mr. Ullman and  
3 Mr. Gallagher. The file had been discussed.  
4 Mr. Blackwell had brought me into a  
5 separate room to discuss this, closed the door,  
6 and represented these were certain accounts that  
7 they needed to have transferred -- certain assets.  
8 Pardon me.  
9 Q. You say he took you into a separate  
10 room and closed the door.  
11 You mean the two of you went and  
12 sat at a desk in an office?  
13 A. Yeah. We went into his office.  
14 Q. Okay. And did you attach any  
15 significance to his closing the door?  
16 A. Most of the discussions I had had  
17 regarding transfer of customer assets had been on  
18 the operations floor with, you know, ten or 15  
19 people who were on the team working on it.  
20 Q. Take a look at the draft letter  
21 attached to 671-B, the attachment.  
22 In that letter you ask  
23 Mr. Blackwell to confirm that the requested assets  
24 were:  
25 "... assets of Lehman Brothers,

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2 Inc. which were sold to Barclays Capital, Inc.  
3 pursuant to the asset purchase agreement dated as  
4 of September 16, 2008, as amended."  
5 Right?  
6 A. That's a correct reading of the  
7 letter -- draft of the letter.  
8 Q. And beyond just a correct reading  
9 of the letter, that was, in fact, what you were  
10 asking him to do. Right?  
11 A. I was, in fact, asking him to  
12 represent that these were assets under the APA.  
13 Q. And you understood that they were  
14 proprietary assets of LBI, not customer assets.  
15 Right?  
16 MR. ROTHMAN: Objection to the  
17 form.  
18 A. I understood them to not be  
19 customer assets.  
20 (Exhibit 672-B marked for  
21 identification.)  
22 Q. Have you had a chance to read  
23 through Exhibit 672-B?  
24 A. I have. Thank you.  
25 Q. And do you recognize that as an

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2 A. No, I do not.  
3 Q. Do you remember ever discussing  
4 this request with Ms. Vecchio?  
5 A. No, I do not.  
6 Q. Do you remember ever discussing  
7 this request with anyone?  
8 A. Then, no -- well, this wouldn't  
9 have been sufficient for me.  
10 MR. ROTHMAN: That wasn't the  
11 question he asked you.  
12 Q. Why would this not have been  
13 sufficient for you?  
14 A. It didn't contain an instruction.  
15 Q. What do you mean by "didn't contain  
16 an instruction"?  
17 A. It says:  
18 "Be over in a minute."  
19 There's no instruction of what to  
20 do with it.  
21 Q. Are you aware that you had six  
22 minutes earlier actually already sent the  
23 instruction and authorization to the DTC on this  
24 transaction -- for this transfer, rather?  
25 A. No.

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2 e-mail string that was sent to you by Neal Ullman  
3 at 4:19 p.m. on Friday, September 26, 2008?  
4 A. I do recognize it to be that, yes.  
5 Q. And that string was about the  
6 transfer of approximately \$269 million in  
7 collateral from the 636 box at DTC to Barclays.  
8 Is that correct?  
9 A. Yes, it appears to discuss that  
10 transfer.  
11 Q. And in the most recent e-mail in  
12 that string, Mr. Ullman says to you:  
13 "Be over in a minute."  
14 Right?  
15 A. That's correct.  
16 Q. Okay. Did he, in fact, come over  
17 to your office to discuss that transfer?  
18 A. I can't recall.  
19 Q. Were you physically located near  
20 Mr. Ullman during this period of time?  
21 A. We were on the same floor of the  
22 building. He was 100 yards away and around the  
23 corner.  
24 Q. Do you remember ever discussing  
25 this request with Mr. Ullman?

1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL  
2 Q. Would it surprise you to learn  
3 that?  
4 MR. ROTHMAN: Objection to the  
5 form.  
6 A. Would it surprise me now?  
7 Q. Yes.  
8 A. Yes.  
9 Q. Did you understand the  
10 approximately \$269 million in securities  
11 referenced in this e-mail string to be a portion  
12 of the assets that Mr. Blackwell had discussed  
13 with you a couple of days earlier?  
14 MR. ROTHMAN: Objection to the  
15 form.  
16 A. No, I did not know what these  
17 assets were, and I did not know them to be related  
18 to the conversation I'd had with Mr. Blackwell.  
19 Q. Do you see anywhere on here any  
20 indication that these are customer assets?  
21 MR. ROTHMAN: Objection to the  
22 form.  
23 A. No.  
24 Q. Take a look at the earliest e-mail  
25 in this string. That's an e-mail from Monty



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2 Forrest to Mister -- to Mr. Blackwell.  
3 Do you see that?  
4 A. I do see that, yes.  
5 Q. Okay. And if you look at the last  
6 sentence of the first paragraph of that e-mail,  
7 you see that Mr. Forrest writes that:  
8 "The list has changed a bit since  
9 this morning as Paolo asked to take out the very  
10 small pieces (under \$10)."  
11 Do you see that?  
12 A. I do see that sentence, yes.  
13 Q. Would it have been acceptable to  
14 leave behind even small pieces if these were, in  
15 fact, customer assets?  
16 MR. ROTHMAN: Objection to the  
17 form.  
18 A. In the course of transferring  
19 customer assets we did many transfers, some of  
20 which were to catch up on transfers that had been  
21 left out in the initial files.  
22 Q. Can you think of any reason why, if  
23 you were transferring customer assets, you would  
24 exclude small portions of the customer assets --  
25 MR. ROTHMAN: Objection to --

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2 later, so they were not always included in the  
3 initial files.  
4 Q. Not quite what I was asking, or at  
5 least may not what I intended to ask. Let me try  
6 it again.  
7 Can you think of any other  
8 transaction where small amounts of securities were  
9 deliberately excluded from a planned transfer of  
10 customer assets?  
11 MR. ROTHMAN: Objection to the  
12 form.  
13 A. No.  
14 THE VIDEOGRAPHER: The time is  
15 11:27. We are going off the record.  
16 (Recess taken.)  
17 THE VIDEOGRAPHER: The time is  
18 11:36. We are back on the record.  
19 (Exhibit 673-B marked for  
20 identification.)  
21 Q. Have you had a chance to look at  
22 Exhibit 673-B?  
23 A. I have, thank you.  
24 Q. And do you see this is an e-mail  
25 from you to various people at the DTCC, copying

1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL  
2 Q. -- from a particular customer  
3 account?  
4 MR. ROTHMAN: Objection to the  
5 form.  
6 A. DTCC is a complicated place. They  
7 were doing the operations for us. We were trying  
8 to get a bulk of the assets across. We wouldn't  
9 have wanted to gum up their systems with small  
10 transfers.  
11 Q. Is that just your speculation now,  
12 or do you have any recollection of thinking that  
13 at the time?  
14 A. That's my understanding of how the  
15 transfers were effected.  
16 Q. Can you think of any other  
17 transfers where small pieces of the -- of the  
18 accounts to be transferred were excluded from the  
19 transfer of DTC?  
20 MR. ROTHMAN: Objection to the  
21 form. It assumes facts not in evidence.  
22 Q. You can answer.  
23 A. As a matter of fact, I know that,  
24 you know, over the course of doing these transfers  
25 the smaller bits of securities had to be cut up

1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL  
2 Mr. Ullman, Ms. Vecchio, Mr. Kobak, Mr. Kiplok,  
3 among others?  
4 A. Yes, that's correct.  
5 Q. And this was an e-mail that you  
6 sent at 4:13 p.m. on Friday the 26th of September,  
7 2008?  
8 A. That's correct.  
9 Q. And you were authorizing on  
10 behalf of the -- strike that.  
11 And you were transmitting to the  
12 DTCC the Trustee's authorization of the transfer  
13 of approximately \$269 million in securities. Is  
14 that correct?  
15 A. There's no dollar figure.  
16 Q. If you'd take a look at the bottom  
17 of the first attachment.  
18 A. 269 units, yes.  
19 Q. And you think it's units, not  
20 dollars?  
21 A. It doesn't say dollars. A lot of  
22 times they transferred numbers of shares.  
23 Q. Do you know whether that's the  
24 same -- strike that.  
25 Do you know whether this is the

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<p>1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL</p> <p>2 "Lehman Market Value" it has a sum of</p> <p>3 \$269,921,368.</p> <p>4 Do you see that?</p> <p>5 A. Yes, I see that.</p> <p>6 Q. Does this refresh your recollection</p> <p>7 that the amount of the transfer you authorized --</p> <p>8 or strike that.</p> <p>9 Does this refresh your recollection</p> <p>10 that the amount of the transfer authorized in</p> <p>11 Exhibit 673-B was, in fact, \$269 million?</p> <p>12 MR. ROTHMAN: Objection to the</p> <p>13 form.</p> <p>14 A. The authorization from Mr. Kiplok</p> <p>15 doesn't state a value.</p> <p>16 Q. Well, if you look at the chart that</p> <p>17 immediately precedes the authorization by</p> <p>18 Mr. Kiplok, you'll see it contains almost the same</p> <p>19 number. It's off by, it looks like, about \$20 as</p> <p>20 the one attached to Exhibit 674-B that we looked</p> <p>21 at a moment ago.</p> <p>22 A. Yes, I see that the numbers are</p> <p>23 approximate and that the attachment on 674-B</p> <p>24 contains two additional lines.</p> <p>25 Q. Those being the lines:</p>	<p>1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL</p> <p>2 "Schultz Securities and securities</p> <p>3 delivered."</p> <p>4 Is that what you're referring to?</p> <p>5 A. Yes.</p> <p>6 Q. Looking at the -- at</p> <p>7 Exhibit 674-B --</p> <p>8 A. Yes.</p> <p>9 Q. -- does that refresh your</p> <p>10 recollection that you were informed by Mr. Fleming</p> <p>11 on the 29th that a transfer of \$269 million in</p> <p>12 securities had taken place?</p> <p>13 MR. ROTHMAN: Objection to the</p> <p>14 form.</p> <p>15 MR. SHAW: You can answer.</p> <p>16 A. By Mr. Fleming?</p> <p>17 Q. Yes.</p> <p>18 A. I don't recall that.</p> <p>19 Q. Well, you note that Mister -- it</p> <p>20 says "Dan" -- this is an e-mail from Mr. Tonucci</p> <p>21 to Mr. Fleming, copying Mr. Marsal.</p> <p>22 Do you see where it says "Dan" --</p> <p>23 this is an e-mail from Mr. Tonucci to Mr. Fleming.</p> <p>24 "Dan, can you advise the SIPC team</p> <p>25 with this transfer of assets that's been</p>
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<p>1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL</p> <p>2 completed."</p> <p>3 A. That is what's written.</p> <p>4 Q. Okay. And do you remember</p> <p>5 Mr. Fleming ever advising any members of the SIPC</p> <p>6 team that it had been completed?</p> <p>7 A. I have no recollection of that.</p> <p>8 MR. SHAW: You can put 674-B aside.</p> <p>9 (Exhibit 675-B marked for</p> <p>10 identification.)</p> <p>11 MR. SHAW: Take a moment to read</p> <p>12 what's now been marked as Exhibit 675-B,</p> <p>13 please.</p> <p>14 Q. Have you had a chance to read</p> <p>15 through that?</p> <p>16 A. I have.</p> <p>17 Q. Do you recognize that as an e-mail</p> <p>18 string between you and Mr. Ullman, dated</p> <p>19 September 29th, 2008?</p> <p>20 A. I do, yes.</p> <p>21 Q. If you'd look at the most -- at</p> <p>22 the -- sorry -- at the oldest e-mail in the string</p> <p>23 at the bottom of the first page. It says:</p> <p>24 "Anson, I am seeking authorization</p> <p>25 to transfer the securities in the attached</p>	<p>1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL</p> <p>2 spreadsheets as part of the transfer of assets to</p> <p>3 Barclays Capital."</p> <p>4 Do you see that?</p> <p>5 A. I do see that.</p> <p>6 Q. And then it attaches two worksheets</p> <p>7 which are not attached to this exhibit.</p> <p>8 Do you see that?</p> <p>9 A. I do see that.</p> <p>10 Q. Do you recall this transfer?</p> <p>11 A. No.</p> <p>12 Q. Do you know why this is headed</p> <p>13 forward resending?</p> <p>14 A. No.</p> <p>15 Q. Take a look at the second e-mail in</p> <p>16 the string. You see that your response to</p> <p>17 Mr. Ullman was that you asked him to confirm that:</p> <p>18 "... the attachments to the e-mail</p> <p>19 below represent assets of Lehman Brothers, Inc.</p> <p>20 that were sold to Barclays Capital, Inc. pursuant</p> <p>21 to the Asset Purchase Agreement dated as of</p> <p>22 September 16, 2008."</p> <p>23 Do you see that?</p> <p>24 A. I see that, yes.</p> <p>25 Q. Okay. That is substantially the</p>

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1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL

2 same as the representation that you asked  
3 Mr. Blackwell to make in the draft letter that you  
4 e-mailed to him a few days earlier. Is that  
5 right?

6 MR. ROTHMAN: Objection to the  
7 form.

8 A. I communicated with Mr. Ullman and  
9 Mister -- and Mr. Blackwell on different subjects.

10 Q. That's not my question, sir.  
11 My question is: The confirmation  
12 you were seeking from Mr. Ullman with respect to  
13 these transfers was substantially the same as the  
14 confirmation you sought from Mr. Blackwell in the  
15 letter that you -- in the draft letter that you  
16 sent him on the 25th?

17 MR. ROTHMAN: Same objection.

18 Q. Is that correct?

19 A. It does seem similar, yes.

20 Q. Okay. And now -- because you  
21 understood that what Mr. Ullman was asking you to  
22 transfer were non-customer assets, just as the  
23 ones Mr. Blackwell had discussed with you earlier.  
24 Right?

25 A. No. I only understood Mr. Ullman

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1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL

2 to be requesting transfer of customer securities.

3 Q. Then why are you asking for this  
4 confirmation?

5 A. I asked for confirmation that the  
6 assets being transferred were appropriate for  
7 transfer every time I made a transfer.

8 Q. Okay. You didn't ask him to  
9 confirm that these were customer assets. Right?

10 A. My understanding with Mr. Ullman is  
11 that we were transferring customer assets.

12 Q. That's not my question, sir.

13 My question is: You did not ask --  
14 you did not ask him to confirm that these were  
15 customer assets being transferred. Right?

16 MR. ROTHMAN: Objection. Asked and  
17 answered.

18 Q. You can answer.

19 A. I asked him to -- no.

20 Q. And you previously stated that --  
21 strike that.

22 And Mr. Ullman confirmed at about  
23 3:50 p.m. on the 29th that what you had asked him  
24 to confirm was correct. Is that right?

25 A. Yes.

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1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL

2 MR. SHAW: Showing you what's been  
3 previously marked as Exhibit 449 in this case.

4 Q. Do you recognize that as an e-mail  
5 that you sent to various personnel at the DTCC and  
6 copied to Mr. Kobak, Mr. Ullman, Ms. Vecchio and  
7 Mr. Gallagher on the 29th of September, 2008, at  
8 approximately 3:52 p.m.?

9 A. Yes.

10 Q. And do you understand that to be  
11 you're transmitting the authorization that  
12 Mr. Ullman was requesting you to transmit in  
13 Exhibit 675-B?

14 A. Yes, I do.

15 Q. And you did that without any  
16 confirmation that these were customer assets. Is  
17 that correct?

18 A. I transferred them as -- in  
19 connection with the Asset Purchase Agreement,  
20 which I understood to effect the transfer of  
21 customer assets.

22 Q. You'd also had a discussion with  
23 Mr. Blackwell a few days earlier where you had  
24 discussed with him a billion dollars of other  
25 assets that were -- that were to be transferred

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1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL

2 pursuant to the Asset Purchase Agreement. Isn't  
3 that correct?

4 A. I had asked Mr. Blackwell at that  
5 time to transmit to me a file and a signed letter  
6 from him that those assets were being transferred,  
7 not Mr. Ullman.

8 MR. SHAW: Move to strike as  
9 nonresponsive.

10 Q. My question, sir, was: And you'd  
11 had a conversation with Mr. Blackwell a few days  
12 earlier about a billion dollars of other assets.  
13 Correct?

14 MR. ROTHMAN: Objection to the  
15 form.

16 You can answer.

17 A. I had had a conversation with  
18 Mr. Blackwell about the transfer of other assets.

19 Q. Yes. And those other assets were  
20 assets that you understood were conveyed under the  
21 Asset Purchase Agreement. Correct?

22 A. I was asking him to represent that  
23 they were conveyed under the Asset Purchase  
24 Agreement.

25 Q. Yes. But you understood that the

24 (Pages 90 to 93)

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1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL  
2 Asset Purchase Agreement dealt with things other  
3 than customer assets. Correct?  
4 MR. ROTHMAN: Objection to the  
5 form.  
6 A. I was asking him to make that  
7 representation.  
8 Q. And you were asking Mr. Ullman --  
9 going back to Exhibit 675-B, you were asking  
10 Mr. Ullman to make that same representation in  
11 connection with these two transfers. Correct?  
12 MR. ROTHMAN: Objection to the  
13 form.  
14 A. I asked Mr. Ullman to confirm that  
15 we were transferring customer assets in connection  
16 with the APA.  
17 Q. Where does -- where do you see the  
18 words "confirm that these were customer assets"?  
19 A. My normal course of dealing with  
20 Mr. Ullman was with customer assets.  
21 Q. Okay. But you did not ask  
22 Mr. Ullman to confirm that these were, in fact,  
23 customer assets; did you?  
24 MR. ROTHMAN: Objection to the  
25 form. He just said that he did.

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1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL  
2 THE VIDEOGRAPHER: The time is  
3 12:03. We are back on the record.  
4 MR. SHAW: Mr. Frelinghuysen, I  
5 have no further questions for you at this  
6 time. Thank you very much.  
7 THE WITNESS: Thank you.  
8 EXAMINATION BY  
9 MR. ROTHMAN:  
10 Q. I'd like to just clarify one thing  
11 with you, if I may, Mr. Frelinghuysen.  
12 Do you recall telling Mr. Shaw that  
13 you saw a draft of the clarification letter on  
14 Monday morning, the 23rd or 22nd?  
15 A. 22nd.  
16 Q. And you assumed that that was the  
17 final version?  
18 A. Yes.  
19 Q. When did you see that draft?  
20 A. I saw that draft around 6:00 a.m.  
21 Q. And why did you assume it was the  
22 final version?  
23 A. We stopped talking about the  
24 clarification letter at that point.  
25 Q. Did you get any further drafts of

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1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL  
2 Q. Can you show me where on this -- on  
3 Exhibit 675-B you asked Mr. Ullman to confirm that  
4 these were customer assets.  
5 A. I asked that they were being  
6 transferred pursuant to the Asset Purchase  
7 Agreement, which I understood to transfer customer  
8 assets.  
9 Q. And which you also understood to  
10 transfer non-customer assets. Right?  
11 A. I had asked other personnel to  
12 inform me or to represent to me that it  
13 transferred other assets.  
14 Q. So you were asking Mr. Blackwell to  
15 give you legal advice on what the Asset Purchase  
16 Agreement transferred?  
17 MR. ROTHMAN: Objection to the  
18 form.  
19 A. Representation is not legal advice.  
20 MR. SHAW: Let's take a five-minute  
21 break. I may be done. I just want to look at  
22 a couple of things.  
23 THE VIDEOGRAPHER: The time is  
24 11:58. We are going off the record.  
25 (Recess taken.)

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1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL  
2 the clarification after 6:00 that morning?  
3 A. I don't recall receiving or seeing  
4 any further drafts of the clarification letter  
5 that morning.  
6 Q. Do you know if the draft that you  
7 got at 6:00 a.m. that morning is the same as the  
8 exhibit that you've been shown here today?  
9 A. I do not know that.  
10 MR. ROTHMAN: That's all I have.  
11 MR. SHAW: Just one question  
12 following up on that.  
13 EXAMINATION BY  
14 MR. SHAW:  
15 Q. Mr. Rothman asked you if you got  
16 any further drafts of the clarification letter  
17 after 6:00 that morning, and you said no.  
18 Were you speaking only for  
19 yourself, or were you purporting to speak for  
20 the -- for any representative of the Trustee --  
21 let me -- let me take that question out and shoot  
22 it and start again.  
23 When Mr. Rothman asked you if you  
24 recalled receiving any further drafts of the  
25 clarification letter after 6:00 that morning, and

1  
2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----X

5 IN RE:

6 Chapter 11

7 LEHMAN BROTHERS Case No. 08-13555(JMP)

8 HOLDINGS, INC., et al.,

9  
10 Debtors.

11 -----X

12  
13  
14  
15 HIGHLY CONFIDENTIAL DEPOSITION OF

16 CHRISTOPHER KIPLOK

17 New York, New York

18 Thursday, March 4, 2010

19  
20  
21  
22  
23  
24 Reported by:  
JOMANNA DeROSA, CSR  
25 JOB NO. 27494



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<p>1 2 3 4 March 4, 2010 5 1:08 p.m. 6 7 8 HIGHLY CONFIDENTIAL Deposition of 9 CHRISTOPHER KIPLOK, held at the offices of 10 Boies Schiller &amp; Flexner, LLP, 575 Lexington 11 Avenue, New York, New York, pursuant to 12 Notice, before Jomanna DeRosa, a Certified 13 Shorthand Reporter and Notary Public of the 14 States of New York, New Jersey, California 15 and Arizona. 16 17 18 19 20 21 22 23 24 25</p>	<p>1 2 A P P E A R A N C E S: 3 JONES DAY, LLP 4 Attorneys for Lehman Brothers, Inc. 5 222 East 41st Street 6 New York, New York 10017-6702 7 BY: JENNIFER L. DEL MEDICO, ESQ. 8 9 BOIES SCHILLER &amp; FLEXNER, LLP 10 Attorneys for Barclays 11 5301 Wisconsin Avenue, N.W. 12 Washington, D.C. 20015 13 BY: JONATHAN SHAW, ESQ. 14 15 HUGHES HUBBARD &amp; REED, LLP 16 Attorneys for SIPA Trustee 17 One Battery Park Plaza 18 New York, New York 10004 19 BY: SETH D. ROTHMAN, ESQ. 20 21 22 23 24 25</p>
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<p>1 2 A P P E A R A N C E S (Continued): 3 QUINN EMANUEL URQUHART OLIVER &amp; HEDGES, LLP 4 Attorneys for the Creditors Committee 5 51 Madison Avenue, 22nd Floor 6 New York, New York 10010 7 BY: ERIC M. KAY, ESQ. 8 9 ALSO PRESENT: 10 11 JOSH LIPSON, Videographer 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 KIPLOK - HIGHLY CONFIDENTIAL 2 THE VIDEOGRAPHER: This is the 3 start of Tape No. 1 of the videotaped 4 deposition of Christopher Kiplok in the matter 5 In re Lehman. Today's date is March 4th, 6 2010, at approximately 1:08 p.m. 7 Will the court reporter please 8 swear in the witness. 9 C H R I S T O P H E R K I P L O K, called as a 10 witness, having been duly affirmed by a 11 Notary Public, was examined and testified 12 as follows: 13 EXAMINATION BY 14 MR. SHAW: 15 Q. Good afternoon, Mr. Kiplok. 16 A. Good afternoon. 17 Q. As I said off the record, my name 18 is Jonathan Shaw. I'm with Boies, Schiller &amp; 19 Flexner. I represent Barclays Capital in this 20 case. 21 You are a partner at the law firm 22 of Hughes Hubbard &amp; Reed. Is that correct? 23 A. Yes. 24 Q. I take it that's a recent 25 promotion. Is that right?</p>

Page 6	Page 7
<p>1 KIPLOK - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. Before that, you were an associate</p> <p>4 with Hughes Hubbard &amp; Reed. Is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. And you were an associate of Hughes</p> <p>7 Hubbard &amp; Reed as of -- in September of 2008.</p> <p>8 Is that right?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. You're here today both in</p> <p>11 your individual capacity and as a 30(b)(6)</p> <p>12 witness. Is that your understanding?</p> <p>13 A. Yes, it is, as to two topics on the</p> <p>14 30(b)(6).</p> <p>15 (Exhibit 676-B marked for</p> <p>16 identification.)</p> <p>17 MR. SHAW: I'm showing you what's</p> <p>18 been marked as Exhibit 676-B.</p> <p>19 Q. Do you recognize this as a 30(b)(6)</p> <p>20 notice to which you've been designated or for</p> <p>21 which you've been designated the Trustee's witness</p> <p>22 on two topics?</p> <p>23 A. Yes.</p> <p>24 Q. And those would be Topics Nos. 4</p> <p>25 and 5. Is that correct?</p>	<p>1 KIPLOK - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. What did you do to prepare to</p> <p>4 testify as a 30(b)(6) witness on those two topics?</p> <p>5 A. I spoke with other -- others of the</p> <p>6 Trustee's professionals, including professionals</p> <p>7 at Hughes Hubbard and Deloitte &amp; Touche.</p> <p>8 Q. Which professionals did you speak</p> <p>9 with at Hughes Hubbard?</p> <p>10 A. There were several that include</p> <p>11 Mr. Kobak, a couple of associates, and -- and some</p> <p>12 others.</p> <p>13 Q. Who are the associates?</p> <p>14 A. Mr. Mills. And that's all I</p> <p>15 recall.</p> <p>16 Q. Who were the couple of others?</p> <p>17 A. I believe -- I have chatted with</p> <p>18 Mr. Giddens, and I believe Mr. Frelinghuysen as</p> <p>19 well, actually.</p> <p>20 Q. And who at Deloitte have you spoken</p> <p>21 with in preparation for your 30(b)(6) deposition?</p> <p>22 A. Ms. Karp and Mr. Harris.</p> <p>23 Q. What is Mr. Harris' first name?</p> <p>24 A. Christopher.</p> <p>25 Q. What did you speak to Mr. Kobak</p>
Page 8	Page 9
<p>1 KIPLOK - HIGHLY CONFIDENTIAL</p> <p>2 about, for purposes of preparing for your 30(b)(6)</p> <p>3 deposition?</p> <p>4 A. General background in connection</p> <p>5 with Topics 4 and 5.</p> <p>6 Q. Okay. And what do you recall</p> <p>7 Mr. Kobak telling you?</p> <p>8 A. I recall my conversations with</p> <p>9 Mr. Kobak, and confirming my own understanding</p> <p>10 of -- of those two topics.</p> <p>11 Q. And when did your conversation with</p> <p>12 Mr. Kobak take place?</p> <p>13 A. Over the last several days. Either</p> <p>14 earlier this week or late last week.</p> <p>15 Q. Okay. And you talked to Mr. Mills.</p> <p>16 What did you and Mr. Mills discuss in preparation</p> <p>17 for your 30(b)(6) testimony?</p> <p>18 A. The Topics 4 and 5 that you alluded</p> <p>19 to.</p> <p>20 Q. And what specifically did you</p> <p>21 discuss?</p> <p>22 A. The -- I think they're enunciated</p> <p>23 in those topics. Specifically it was confirming</p> <p>24 my understanding of those topics.</p> <p>25 Q. Did Mr. Kobak provide you with any</p>	<p>1 KIPLOK - HIGHLY CONFIDENTIAL</p> <p>2 facts as to which you will testify today</p> <p>3 concerning those topics?</p> <p>4 A. I don't think so. I think I've --</p> <p>5 he confirmed my understanding, which -- which was</p> <p>6 the goal of our conversation. If there's any</p> <p>7 disagreement, he may -- he may have done so, but</p> <p>8 there was not.</p> <p>9 Q. What about Mr. Mills? Did he</p> <p>10 provide you with any factual information</p> <p>11 concerning those two topics?</p> <p>12 A. I -- I recall Mr. Mills providing</p> <p>13 me with some documents, which included -- the one</p> <p>14 document that I recall is a letter from Jonathan</p> <p>15 Hughes, addressed to the Trustee, and there were</p> <p>16 some others, but I don't specifically recall.</p> <p>17 Q. When did you talk with Mr. Mills?</p> <p>18 A. This week.</p> <p>19 Q. And the letter from Mr. Hughes to</p> <p>20 the Trustee, what was the topic of that letter?</p> <p>21 A. Claims Barclays has made that I</p> <p>22 understand are now the subject of this litigation.</p> <p>23 Q. Did Mr. Mills explain to you why he</p> <p>24 was providing you with a copy of that letter?</p> <p>25 MR. ROTHMAN: Let me just</p>

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<p>1 KIPLOK - HIGHLY CONFIDENTIAL</p> <p>2 interject. Mr. Mills doesn't -- isn't a</p> <p>3 person who has personal knowledge of these</p> <p>4 topics or who were -- was involved in these</p> <p>5 topics. He was preparing Mr. Kobak for the</p> <p>6 deposition and showing him documents in</p> <p>7 connection with the preparation.</p> <p>8 MR. SHAW: All right.</p> <p>9 Q. What did you discuss with</p> <p>10 Mr. Giddens about these two topics?</p> <p>11 A. It was similar to my conversation</p> <p>12 with Mr. Kobak, confirming my understanding of --</p> <p>13 frankly, to be sure I had a fulsome understanding</p> <p>14 of both topics, and he confirmed that I had such</p> <p>15 an understanding.</p> <p>16 Q. And when did you talk with</p> <p>17 Mr. Giddens?</p> <p>18 A. Yesterday. Yesterday. I don't</p> <p>19 remember whether it was morning or afternoon.</p> <p>20 Q. For about how long?</p> <p>21 A. I don't recall. Less than an hour.</p> <p>22 Q. And when did you speak with</p> <p>23 Mr. Frelinghuysen about those two topics?</p> <p>24 A. I think it was earlier this week.</p> <p>25 Q. And what did you discuss with</p>	<p>1 KIPLOK - HIGHLY CONFIDENTIAL</p> <p>2 Mr. Frelinghuysen about those topics?</p> <p>3 A. I recall my discussion with</p> <p>4 Mr. Frelinghuysen was limited to, I think, Topic</p> <p>5 4, the clearance box asset topic.</p> <p>6 Q. And what did Mr. Frelinghuysen tell</p> <p>7 you about that topic?</p> <p>8 A. Again, I presented him with my</p> <p>9 understanding, and I don't think he added anything</p> <p>10 to the understanding I had.</p> <p>11 Q. And when did you speak to Ms. Karp?</p> <p>12 A. This morning.</p> <p>13 Q. And how long did you speak to her?</p> <p>14 A. I don't recall specifically. I'd</p> <p>15 estimate maybe 30 minutes or so.</p> <p>16 Q. Was that by telephone?</p> <p>17 A. In person.</p> <p>18 Q. In person. And did Ms. Karp convey</p> <p>19 any facts to you about either Topic 4 or Topic 5?</p> <p>20 A. She conveyed to me what I'll call a</p> <p>21 high level understanding of the work Deloitte had</p> <p>22 done around Schedule B, to the extent that would</p> <p>23 impact Topic No. 4.</p> <p>24 Q. And what work did she tell you that</p> <p>25 Deloitte had done around Schedule B?</p>
Page 12	Page 13
<p>1 KIPLOK - HIGHLY CONFIDENTIAL</p> <p>2 A. That Deloitte had tried to</p> <p>3 comprehend the schedule, had requested, on several</p> <p>4 occasions, to meet with Barclays to further</p> <p>5 understand the schedule, that such requests were</p> <p>6 repeatedly denied, and that from Deloitte's</p> <p>7 perspective, the schedule was not helpful.</p> <p>8 Q. Did she say when Deloitte tried to</p> <p>9 comprehend the schedule?</p> <p>10 A. I don't recall specifically, but --</p> <p>11 or if she mentioned it. I -- I do recall that --</p> <p>12 and she refreshed my recollection -- that a</p> <p>13 request to meet with Barclays as to the schedule</p> <p>14 was raised at a meeting that I and others and she</p> <p>15 participated in with some of your partners and</p> <p>16 your client in June, when the request for</p> <p>17 assistance in -- in understanding the schedule was</p> <p>18 refused.</p> <p>19 Q. That would be June of 2009?</p> <p>20 A. Yes.</p> <p>21 Q. And what did you discuss with</p> <p>22 Mr. Harris about Topics 4 or 5?</p> <p>23 A. Mr. Harris was with Ms. Karp when</p> <p>24 we had this discussion. And so, I think my prior</p> <p>25 answers would cover that.</p>	<p>1 KIPLOK - HIGHLY CONFIDENTIAL</p> <p>2 Q. Aside from Mr. Mills, did anyone</p> <p>3 provide you with any documents to review in</p> <p>4 preparation for your 30(b)(6) testimony?</p> <p>5 A. Mr. Mills was assisted with others</p> <p>6 in preparation for my deposition, you know, a</p> <p>7 paralegal and another associate. And whether that</p> <p>8 was in connection with 30(b)(6) or generally, I --</p> <p>9 I don't recall.</p> <p>10 Q. Let's start with Topic No. 5. Has</p> <p>11 the Trustee or any of his representatives had any</p> <p>12 communication with the Securities and Exchange</p> <p>13 Commission concerning any proposed transfer of</p> <p>14 securities to Barclays under Paragraph 8, sub 2,</p> <p>15 of the clarification letter?</p> <p>16 A. The Trustee has not proposed</p> <p>17 transferring securities. I understand 8 sub 2 to</p> <p>18 refer to the 15c3 account.</p> <p>19 Q. That's correct.</p> <p>20 A. Such proposal has not been made.</p> <p>21 Q. Has the Trustee sought permission</p> <p>22 from the SEC or any other regulatory agency to</p> <p>23 transfer securities to Barclays pursuant to that</p> <p>24 provision?</p> <p>25 A. The claim that Barclays has made to</p>

1 KIPLOK - HIGHLY CONFIDENTIAL  
2 those assets has been the subject of certain  
3 discussions with the SEC, and the SEC has  
4 confirmed -- in those discussions, I'd say that  
5 the SEC staff that those discussions occurred with  
6 agreed with the Trustee's position that, at best,  
7 it would be premature for even a proposal of such  
8 transfer to be made.  
9 Q. Who at the SEC has had those  
10 discussions with the Trustee or the Trustee's  
11 staff?  
12 A. Individuals in the Department of  
13 Market Regulation.  
14 Q. What were their names?  
15 A. They included Mr. Machiaroli and  
16 Mr. McGowan.  
17 Q. Who representing the Trustee was  
18 involved in those communications?  
19 A. I was, as well as Mr. Kobak.  
20 Q. When did those discussions take  
21 place?  
22 A. We meet or have met on what I'll  
23 call a semi-regular basis with the staff,  
24 including the two individuals I referenced, the  
25 SEC staff, you know, throughout the proceeding,

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2 discussions with such an entity?  
3 A. I recall a brief discussion with  
4 FINRA that included Barclays, I'll call it claim  
5 or demand to the 3-3 assets. The SEC staff was  
6 present, and that FINRA's, at least the  
7 individuals we met with, confirmed or had the same  
8 understanding that the estate and the SEC did.  
9 That, again, at best, until  
10 customer claims have been satisfied, it would be  
11 premature to even have a proposed release of those  
12 3-3 assets.  
13 Q. Who representing FINRA attended  
14 that meeting?  
15 A. I recall Ms. Vogel and Mr. Wollman.  
16 Q. And you have summarized what you  
17 understood to be the position of the SEC and  
18 FINRA.  
19 Can you recall anything that they  
20 actually said, the actual words?  
21 A. I don't recall specifically who  
22 said it, but at one point I think I do recall the  
23 phrase "that claim is crazy" being used, but I  
24 don't recall specifically who said it or when.  
25 Q. Let's look at Topic 4 now.

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2 and I don't recall specifically when these issues  
3 were raised.  
4 Q. 2010, 2009, 2008; when?  
5 A. Well, again, I don't recall  
6 specifically when they were made. I know it  
7 wasn't apparent to the estate that Barclays was  
8 making these claims until several months into the  
9 proceeding. I would say generally 2009, but,  
10 again, I don't recall specifically, and I believe  
11 these discussions occurred on more than one  
12 occasion.  
13 Q. Were there any written  
14 communications concerning these discussions or the  
15 topic of these discussions?  
16 A. No. You mean with the SEC?  
17 Q. SEC.  
18 A. There have been written  
19 communications with Barclays, but not with the  
20 SEC.  
21 Q. Are these discussions recorded in  
22 any way?  
23 A. No.  
24 Q. What about any regulatory agency  
25 other than the SEC? Are there any such

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2 What have you done to ascertain  
3 what the disposition of securities or other assets  
4 in LBI's clearance boxes at the time of the  
5 closing was, to the extent the Trustee no longer  
6 retains them?  
7 A. Would you repeat the question? I  
8 mean, are you reading me the topic?  
9 Q. What I'm really doing is misreading  
10 the topic.  
11 A. Okay.  
12 Q. To the extent that the LBI Trustee  
13 or the LBI estate no longer holds any security or  
14 other asset that was held in LBI's clearance boxes  
15 as of the time of the closing, how are such  
16 securities or other assets disposed of?  
17 A. Well, first I think Barclays is  
18 probably very familiar with the disposition of  
19 clearing box assets used to satisfy certain  
20 customer claims, including, you know, over \$42  
21 billion that transferred as part of the PIM  
22 conversion to Barclays, and a slightly larger  
23 amount that transferred to the PAM conversion.  
24 So, you know, I'm assuming your  
25 question is aside from those -- what I'll call



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2 Others were on the phone. I didn't quite know who  
3 was there.

4 But what I principally remember  
5 when I walked in was a negotiation or a dispute, I  
6 frankly couldn't tell when I walked into the room,  
7 between Mr. Cox of Barclays, and Mr. Cutler of  
8 Chase, and my understanding going to Weil Gotshal  
9 was that there was an issue that could prevent the  
10 closing, and it became apparent, when I arrived at  
11 Weil Gotshal, that that issue appeared to be an  
12 issue between Chase and Barclays because there was  
13 a substantial and sustained discussion between  
14 Mr. Cutler. And I believe some of the Wachtell  
15 lawyers were with him, but I just don't recall,  
16 and Mr. Cox. And that ensued -- if I arrived at  
17 5:00 or so, that had to ensue for a couple of  
18 hours.

19 Q. Did you participate in any other  
20 discussions between then and -- and the closing on  
21 Monday morning?

22 A. Well, first of all, I clearly did  
23 not participate in any of those discussions. I  
24 walked in, in the middle of them, and at best was  
25 trying to make heads or tails of what could

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2 possibly prevent the closing.

3 You know, to be clear, that entire  
4 weekend we were focused on transferring accounts  
5 and what, in our view, was fulfill the public  
6 interest of the deal, which was moving as many  
7 accounts as possible, and then, secondly,  
8 preparing for the days and weeks of the SIPA case  
9 that would follow.

10 It was never my intention to  
11 participate, nor frankly seeing what I walked  
12 into, did I have the resources to participate in  
13 the discussions that were occurring either in that  
14 conference room or on the phone. So, I first say  
15 that.

16 There was initially that discussion  
17 with Chase. Later in the evening there were  
18 discussions, I recall, involving issues that DTCC  
19 had. And, again, I was trying to monitor those  
20 discussions, and as the night wore on, there were  
21 some multiple documents. But we were, frankly,  
22 doing all we could to be sure the closing occurred  
23 so that the transfer of accounts happened. We  
24 were looking to the days and weeks to come. We  
25 thought the deal had been done Friday evening

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2 before Judge Peck.

3 Q. Tell me what you recall about this  
4 issue involving the DTCC.

5 A. I recall the DTCC had some concerns  
6 regarding its exposure, and -- and the collateral  
7 available to cover that exposure. I -- I don't  
8 recall much of the specifics. I -- I do recall  
9 that DTCC issues were, in part, discussed at some  
10 point late in the evening around midnight or  
11 12:30. The whole -- there were many occasions, by  
12 the way, when I refer to this group, where the  
13 group would disburse.

14 And I recall Barclays had two or  
15 three conference rooms, and Weil was obviously in  
16 their firm, so Lehman had two or three conference  
17 rooms. The Creditors Committee had a conference  
18 room, all filled with their professionals. And  
19 there would be these gaps in the evening where,  
20 frankly, it would be Mr. Frelinghuysen and me  
21 perhaps alone in the large conference room because  
22 the other parties had broken out, what I'll call  
23 the parties who -- at least Barclays and Lehman --  
24 who were participating in the transaction.

25 But I -- I recall at one point,

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2 midnight or 12:30, and this is in connection with  
3 DTCC, the group reconvened in a large room, and a  
4 pronouncement was made, I believe, by Mr. Harvey  
5 Miller, that the \$250 million consideration that  
6 Barclays was going to pay would first be deposited  
7 with the DTCC, and only at such time that DTCC had  
8 covered its exposure -- I'm speaking in broad  
9 terms -- would such \$250 million be released to  
10 the estate.

11 I remember thinking that that  
12 basically meant Barclays was getting 72,000  
13 accounts for nothing from the estate. But, again,  
14 we were focused on the customer account transfer  
15 process and -- and the transaction proceeded.

16 Q. Were you privy to any other  
17 discussions about the DTCC issue? And I exclude  
18 internal discussions at Hughes Hubbard or with the  
19 Trustee.

20 A. You know, I do recall early morning  
21 hours speaking to Shelly Hirshon at Proskauer, but  
22 I -- I just recall that happening. I don't recall  
23 any of the specifics. And I know Larry Thompson  
24 and some others from DTCC were on and off the  
25 phone at various points. So, I guess what I'm



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2 saying is I remember there were other discussions,  
3 but I just don't remember specifics. The specific  
4 is the point I mentioned about the 250 million.

5 Q. Were you involved at all in the  
6 negotiation of the terms of the clarification  
7 letter?

8 A. No, not at all.

9 Q. Were you involved in any  
10 discussions concerning the terms of the  
11 clarification letter over the course of that  
12 weekend?

13 A. First of all, I don't think I was  
14 aware that a clarification letter existed until  
15 sometime into the evening on Sunday, which I guess  
16 is the 21st. I was aware that after the parties  
17 had left the courtroom, that certain statements  
18 had been made on the record that needed to be --  
19 I'll use your word -- "clarified," but that -- the  
20 understanding I had was that such would have been  
21 accomplished shortly after the sale hearing or  
22 first thing Saturday morning.

23 So, again, I was focused on account  
24 transfers and the like. But Sunday evening I do  
25 recall the term "clarification letter" quite

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2 discussions concerning the economic terms of the  
3 sale transaction?

4 A. No.

5 Q. Did anyone, over the course of that  
6 weekend, state or suggest, in any way, to your  
7 knowledge, that the -- that the terms of the sale  
8 transaction, as captured in the APA and the  
9 clarification letter, differed from what had been  
10 approved by the Court?

11 A. I don't recall. I don't recall  
12 that.

13 Q. Was anyone representing the Trustee  
14 tasked with monitoring the negotiation of the  
15 clarification letter?

16 A. No. We were -- I think  
17 Mr. Frelinghuysen and myself -- Mr. Frelinghuysen  
18 had been at Weil Gotshal from the early morning of  
19 Saturday, actually. We asked him to go up to  
20 execute whatever needed to be done to finalize the  
21 deal that had been presented to Judge Peck. And  
22 he remained at Weil Gotshal for countless hours  
23 and even into Sunday for that to occur, and that  
24 did not happen.

25 When I arrived at Weil Gotshal, I

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2 clearly. I think there were drafts on conference  
3 room tables. I never had an opportunity to what  
4 I'd say read or review the document. The one  
5 thing I do remember is at some point being in a  
6 conference room. You know, I was in and out of  
7 many as different documents and issues were  
8 percolating through the wee hours of the morning,  
9 where I believe Mr. Messineo from Weil Gotshal was  
10 at a laptop computer, and there was an issue as to  
11 the 15c3 account, the clarification letter. And  
12 at some point I recall saying to him we need that  
13 asset or something along those lines, and his  
14 response being, you know, don't worry -- don't  
15 worry, we've made -- you know, we've got that  
16 covered, and he raised his hand off of the laptop.  
17 I recall that.

18 But beyond that session where I was  
19 in that conference room, which was -- I think  
20 there were three or four Weil Gotshal lawyers and  
21 at least a half dozen Cleary lawyers, and a couple  
22 of Simpson Thatcher lawyers in the room, I don't  
23 recall any -- anything else regarding drafting of  
24 the clarification letter.

25 Q. Were you present for any

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2 was there to monitor, frankly, any -- as I've said  
3 before, issues attendant to anything that could  
4 prevent account transfers from occurring. I was  
5 not -- it was not my understanding, in arriving at  
6 Weil Gotshal, or while I was there, that I would  
7 be, you know, participating in a negotiation. I  
8 tried to keep my eye on as much as possible, but  
9 there were a number of documents and a number of  
10 issues that evening. And all the while still  
11 focused on our team back at Hughes Hubbard that  
12 was working on, you know, motions for the first  
13 days of the case, and -- and what was going on  
14 with the transfers of accounts.

15 Q. I just want to be clear. You may  
16 have said this already. You did not have an  
17 opportunity, between the time you got there or  
18 whenever it was on Sunday, and the closing on  
19 Monday morning, to ever read the clarification  
20 letter. Is that correct?

21 A. No, I don't recall being able to  
22 sit down and read through the letter, no.

23 Q. Do you know whether the Trustee or  
24 any of his representatives requested any changes  
25 to the terms of the clarification letter at any

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2 point over the weekend?

3 A. The only thing I recall was what I  
4 mentioned earlier in connection with the 3-3  
5 account. And -- and I don't recall much more than  
6 what I've already said, that I know it was an  
7 issue, and I don't want to travel on any privilege  
8 grounds, but that was of a concern to Mr. Kobak  
9 and to me, based on our understanding of what a  
10 3-3 account was, and the role it would play for  
11 customer accounts, because we were very concerned.  
12 We did have an understanding that the customer  
13 accounts would be left in the estate. We had an  
14 understanding that substantial assets would be  
15 left to satisfy them. But that the 3-3 account  
16 would be one of the primary assets to do that.

17 So, I do recall what I said  
18 earlier, saying -- you know, speaking to  
19 Mr. Messineo and having -- and I don't recall  
20 specifically if that was language being added or  
21 the like. I just don't recall more than that. It  
22 was, you know, 3:00 in the morning on Monday.

23 Q. Were you aware that weekend that  
24 the clarification letter referenced a Schedule A  
25 and a Schedule B?

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2 Q. Why was the Trustee concerned that  
3 the deal close?

4 A. You know, as I said earlier, the  
5 primary concern -- again, I'm saying my  
6 understanding --

7 Q. Sure.

8 A. -- is -- was with the transfer of  
9 accounts to Barclays and Neuberger Berman. So,  
10 that trading could resume on as seamless a basis  
11 as possible.

12 Q. So, after you left Weil Gotshal at  
13 about 8:30 in the morning on Monday, where did you  
14 then go?

15 A. I went home and took a shower and I  
16 was at Hughes Hubbard by about 9:30.

17 Q. Okay. And if you can give me an  
18 overview of what you did between then -- in  
19 connection with this deal, obviously -- between  
20 then and the end of September 2008?

21 A. I was focused primarily on the  
22 transfer of accounts and the various pleadings,  
23 motions, and I forget when the first controversies  
24 arose, but disputes of the SIPA proceeding.

25 Q. In terms of the transfer of

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2 A. No, I was not.

3 Q. Did you learn that post-closing?

4 A. I believe at -- I mean, the terms  
5 are not unfamiliar to me now, so at some point,  
6 but I don't -- I really can't recall when.

7 Q. Do you think it might have been  
8 within the month of September 2008?

9 A. Frankly, no, largely because I -- I  
10 know what happened when I left Weil Gotshal that  
11 morning, and it was full speed ahead, largely  
12 transferring assets to accounts that now reside  
13 with Barclays.

14 From the night -- from 1:30 in the  
15 morning on that Saturday forward, you know, we  
16 were moving forward with the mission of customer  
17 protection. I don't recall focusing on APA  
18 transactions or anything else, but I do recall  
19 spending countless hours and weekends on transfers  
20 of accounts for customers.

21 Q. Did you stay at Weil Gotshal until  
22 the closing on -- on Monday morning?

23 A. Yes. I left Weil Gotshal roughly  
24 8:30 in the morning. I believe the wires hit a  
25 few minutes before 8:00 is my best memory.

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2 accounts and assets, what was the allocation  
3 responsibilities between yourself and  
4 Mr. Frelinghuysen?

5 A. I'm not sure there was a direct  
6 allocation of responsibilities. I recalled that  
7 Tuesday morning, which I think is the 23rd, early  
8 that morning the Trustee asked Mr. Frelinghuysen  
9 to head to Lehman's operation center in Jersey  
10 City, New Jersey, I believe it's 70 Hudson Street,  
11 now premises occupied by Barclays, and asked me to  
12 head to 745 Seventh Avenue to go to Mr. Russo's  
13 office so the Trustee had his personnel on site to  
14 facilitate the transfers.

15 As I was heading up there, I was  
16 directed to 1271 -- I think it's Sixth Avenue --  
17 it's the Barclays office now -- which is where I  
18 headed. And so, to the extent there was a  
19 division at all, it was I would be up at the New  
20 York office and Anson would be in Jersey City.

21 Q. Did you deal -- strike that.

22 In connection with the -- with  
23 requests for transfers -- strike that.

24 In connection with the request that  
25 assets be transferred, did you deal with former

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2 Lehman employees who are now employed by Barclays?

3 A. Yes.

4 Q. Who particularly did you deal with?

5 A. The -- I guess beginning that  
6 Tuesday, my primary contact was a managing  
7 director named Laura Vecchio, and the idea was --  
8 the premise was that we wanted -- and "we" being  
9 the estate -- wanted to transfer customer assets  
10 as promptly as possible, knowing that ultimately  
11 there would be, as there has now been, a  
12 reconciliation of all those transfers.

13 Ms. Vecchio's role was to be a  
14 central point so that I wouldn't be getting  
15 requests from multiple -- what I'll call  
16 Lehman/Barclays people. That did still happen. I  
17 recall in particular Ms. Black sending me many  
18 varied and confusing and different instructions  
19 that had to be then vetted through Ms. Vecchio. I  
20 recall a Mr. Jennings doing the same thing.

21 I don't think anything was being  
22 done in bad faith, but I think having the central  
23 point of contact was helpful because otherwise the  
24 demands being made by different Barclays personnel  
25 were often inaccurate and appeared to be confused

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2 and a half with this past December's motion and  
3 order.

4 Q. You said when you went up to Lehman  
5 you stated that your role was to provide whatever  
6 authorization, depository is needed in connection  
7 with the release of customer assets.

8 To whom did you convey that?

9 A. I -- I said that to Ms. Vecchio. I  
10 remember having a conversation at some point, I  
11 believe, during the week of the 22nd, or the  
12 following week with Mr. Raisler at Sullivan &  
13 Cromwell when there were certain issues by Chase  
14 Bank, and I remember saying to him our role is to  
15 facilitate customer account transfers.

16 And he actually said he had always  
17 worried that if there ever was a large  
18 broker-dealer failure, it would be the Trustee  
19 that would be the block to customers getting their  
20 assets, not the depository, and that he was  
21 very -- and how grateful he was that the Trustee  
22 was trying to move customer assets on an expedited  
23 basis.

24 So, those are the two conversations  
25 I, in particular, remember having. There very

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2 on their side.

3 Q. In determining whether to approve  
4 or reject any particular request for a transfer,  
5 what criteria did you apply?

6 A. The entire premise was that we were  
7 transferring customer assets, and that was the  
8 understanding that we portrayed at the beginning.  
9 Literally when I went up to Lehman, I said this  
10 is -- my role is to provide whatever  
11 authorization, you know, the depositories -- in  
12 connection with me, it ended up primarily being  
13 Chase -- would need to release customer assets to  
14 get into customer accounts.

15 And it was with that understanding  
16 that all -- that I was -- that I had been made  
17 available, and in general that I would be  
18 authorizing any of the request. So, a request  
19 would be made, and I would be sure it was verified  
20 through Ms. Vecchio that it was related to  
21 customer accounts, again, on the entire  
22 understanding that should there be any missed  
23 deliveries, over-deliveries, under-deliveries, that  
24 would be reconciled in due course, which, I think  
25 as Barclays knows, was accomplished over a year

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2 well may have been others.

3 I recall conversations with  
4 Mr. Novikoff (phonetic), I believe Mr. Minland at  
5 Wachtell, that it was my role to provide them with  
6 the authorizations they required to accomplish,  
7 again, the transfer of customer assets.

8 Q. You say you recall a conversation  
9 with Ms. Vecchio. When did that conversation take  
10 place?

11 A. I don't recall specifically, but  
12 likely it would have been the 23rd when I arrived.  
13 Sort of this is just -- this is who I am, this is  
14 why I'm here, how can I be helpful to the transfer  
15 of customer accounts.

16 Q. Do you remember any of the specific  
17 words used in that discussion?

18 A. No.

19 Q. In determining whether to approve  
20 any given request for a transfer of assets, what  
21 steps did you take to ensure or to verify that the  
22 assets in question were customer assets?

23 A. I was relying primarily on  
24 Ms. Vecchio as a gatekeeper, and the fact that  
25 should there be a reconciliation, it could be done

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2 so later. Largely I was relying on the fact that  
3 I was acting in good faith, and that the parties  
4 would be too, to be sure customer assets were  
5 transferred. And there were -- there were  
6 over-deliveries that were -- that did come back to  
7 the estate later.

8 But there was, I think,  
9 intentionally not, you know, a large diligence  
10 process at the time, for the very reason that we  
11 wanted customers to get their assets as quickly as  
12 possible. We weren't about to have 1,000 Deloitte  
13 accountants descend on Lehman. We intended to  
14 step back, allow the transfers to occur, and deal  
15 with the remaining customers that were left, and  
16 in a reconciliation, and as much was presented to  
17 the Court. I believe Mr. Caputo made that clear,  
18 that that was the intent at the beginning of the  
19 proceeding.

20 Q. Did you require any representations  
21 from Barclays explicitly that assets being  
22 requested were customer assets?

23 A. I believe that the process I had  
24 with Ms. Vecchio was to get her okay that these  
25 were assets for the transfer of customer accounts.

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2 mean, I have spoken to Neal. I know who he is.  
3 But I don't recall -- you know, I don't recall  
4 anything specific with Mr. Ullman that week. He  
5 was not where I was. Neal worked in Jersey City.

6 Q. Ms. Vecchio was in Manhattan?

7 A. That's right.

8 Q. I'm showing you what has previously  
9 been marked as Exhibit 671-B.

10 Do you recognize that document as  
11 an e-mail from Mr. Frelinghuysen to Mr. Blackwell,  
12 on which you were copied on Thursday, September  
13 25th, 2008?

14 A. I can read it, sitting here today.  
15 That is what it appears to be, yes.

16 Q. Do you have any recollection of  
17 receiving this document at the time?

18 A. No.

19 Q. Do you have any understanding of  
20 what the issue that this document related to was?

21 A. No.

22 Q. I'm showing you what has previously  
23 been marked as Exhibit 447 in this case.

24 A. Okay.

25 Q. Do you recognize that as an e-mail

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2 And I generally recall that the  
3 language used in the authorizations, as a general  
4 matter, included authorizing the transfer of  
5 customer accounts.

6 Q. Did you take steps to ensure that  
7 that language that you just referred to would  
8 appear in authorizations of customer account  
9 transfers?

10 A. I'd say I used my best efforts at a  
11 time when there was a lot going on. So, it  
12 wouldn't shock me if it didn't happen each and  
13 every time. But more to the point, it was clearly  
14 my intent, with any authorization I made, that it  
15 was for a customer asset used to support a  
16 customer account.

17 Q. Did you come to learn, during that  
18 week, that Mr. Frelinghuysen had had a discussion  
19 with Alastair Blackwell concerning the transfer of  
20 non-customer assets to Barclays pursuant to the  
21 APA?

22 A. I don't recall that, no.

23 Q. Did you have any communications  
24 with Neal Ullman during that week?

25 A. If I did, I don't recall them. I

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2 to you from Laura Vecchio, dated Friday, the 26th  
3 of September, 2008?

4 A. I can read it today, and that is  
5 what it appears to be, yes.

6 Q. Do you recall receiving this e-mail  
7 at the time?

8 A. No, I do not.

9 Q. Do you recall anything about the --  
10 the request for a transfer of \$269 million in  
11 securities from the DTC to the 636 box?

12 A. No, I do not.

13 Q. Do you recall how you responded to  
14 this request?

15 A. No, I don't.

16 Q. Do you recall any discussion with  
17 Ms. Vecchio or anyone else about this request?

18 A. Not this request specifically. I  
19 spoke to Ms. Vecchio at that time, probably  
20 multiple times a day.

21 (Exhibit 677-B marked for  
22 identification.)

23 THE WITNESS: Okay.

24 Q. You've had a chance to review  
25 Exhibit 677-B?



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2 A. I've looked at it, yes.

3 Q. And do you recognize that as an  
4 e-mail string that you were sent -- or that you  
5 were copied on various parts of -- and as you  
6 wrote various parts of on the 24th of September,  
7 2008?

8 A. Reading it today, that's -- that's  
9 what it appears, yes.

10 Q. Do you have any recollection of  
11 the -- the transfers that are being discussed in  
12 this e-mail string?

13 A. Not specifically.

14 Generally, this is reflective of  
15 what I believe I had mentioned earlier, and it was  
16 Ms. James. I don't know if I used her proper  
17 name, and Mr. Jennings as a couple of the -- what  
18 I'll call Lehman/Barclays people who are reaching  
19 out to me directly for requests.

20 And in this instance I can see,  
21 reading the document, that it was an instance  
22 where I went back to Ms. Vecchio on the e-mail to  
23 see if she indeed concurred with the transfers of  
24 the customer foreign futures and foreign options  
25 security account, which I -- I did do.

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2 an e-mail sent by you to Ms. Vecchio and  
3 Mr. Frelinghuysen on Wednesday, the 1st of  
4 October, 2008?

5 A. Reading it, I don't recall it, but  
6 that is -- that is what it appears to be, at least  
7 the top message.

8 Q. And the top message says:  
9 "Anson, please do not take action  
10 in this yet. Laura is clarifying this  
11 instruction."

12 What did you mean by "Laura is  
13 clarifying this instruction"?

14 A. I don't recall specifically.  
15 Generally, I would believe this would refer to --  
16 there were several instances where -- again, I  
17 mentioned were people would try to reach out to  
18 me.

19 There were instances where  
20 Ms. Vecchio, I recall, would get several requests  
21 and she would try to filter them through herself.  
22 So, this may have been an instance where  
23 Ms. Vecchio said to me, perhaps in person or by  
24 the telephone, wait a minute, we need to have  
25 further clarity.

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2 But beyond that, I don't recall  
3 this or any other transfers in -- in particular.

4 Q. So I'm clear, you now believe that  
5 when you earlier said Ms. Black, you were thinking  
6 of Ms. James?

7 A. If that's what I said, I think I  
8 may have -- I -- I recall Ms. James on the future  
9 side. And the reason I, in part, recall her is  
10 her e-mail signature had this kind of funky thing  
11 where her name slid in. But I remember Ms. James.  
12 Ms. Black I may have -- I think I meant Ms. James,  
13 if that's what I said.

14 But I do recall Ms. James making  
15 some requests, which at first she had asked for,  
16 just to use a round number, 300 million from the  
17 XYZ account, and then it would come back as less  
18 than that, and she'd ask for less. And I just  
19 remember having the sense that there was confusion  
20 on the Barclays side. And that was one of the  
21 reasons that we took some comfort in funneling  
22 things through Ms. Vecchio.

23 (Exhibit 678-B marked for  
24 identification.)

25 Q. Do you recognize this document as

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2 But, again, I don't recall  
3 specifically. I mean, reading it, it seems to me  
4 that I was telling Anson not to act on this. And  
5 I would assume he did not act on it, based on my  
6 saying so.

7 Q. But you have no specific  
8 recollection of this particular incident?

9 A. I don't recall this specific  
10 message, no, not -- not specifically.

11 Q. And you don't recall any discussion  
12 with Ms. Vecchio about this particular issue; do  
13 you?

14 A. Not specifically, no.

15 THE VIDEOGRAPHER: The time is  
16 2:13. We are going off the record.

17 (Recess taken.)

18 THE VIDEOGRAPHER: The time is  
19 2:21. We are back on the record.

20 (Exhibit 679-B marked for  
21 identification.)

22 THE WITNESS: Okay.

23 Q. Do you recognize this, sir, as an  
24 e-mail chain involving you, I believe, at every  
25 stage, although at one point your e-mail address

13 (Pages 46 to 49)



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1 KIPLOK - HIGHLY CONFIDENTIAL  
2 was misspelled and it was later forwarded to you?  
3 A. Reading it, this is -- that's --  
4 that is what it appears to be, yes.  
5 Q. Okay. Looking at the most recent  
6 e-mail on the chain, so, the very first one, you  
7 say:  
8 "I think we are okay with the  
9 below. We should revisit the LOC issue later  
10 after transfers of collateral are affected."  
11 Do you see that?  
12 A. I do.  
13 Q. When you say "I think we are okay  
14 with the below," were you referring to the first  
15 paragraph of the e-mail from Mr. McDaniel to you  
16 that's dated October 2nd at 1:28 p.m.?  
17 A. I -- I don't recall specifically.  
18 I can read the document as well as you can. I  
19 recall generally that this was an issue that  
20 became a topic of great discussion and  
21 consideration, without breaching any privilege  
22 within my firm, and I believe it went on much  
23 later than the first few days of October.  
24 So, I can read what I said, and you  
25 may well be right, that it refers to that, that,

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1 KIPLOK - HIGHLY CONFIDENTIAL  
2 MR. SHAW: I have no further  
3 questions for you, sir.  
4 MR. ROTHMAN: I have no questions  
5 for the witness.  
6 MR. STERN: No questions.  
7 MR. DAKIS: No questions.  
8 MR. SHAW: Thank you very much.  
9 THE VIDEOGRAPHER: The time is  
10 2:25. We are going off the record.  
11 (Time Ended: 2:25 p.m.)  
12  
13  
14 CHRISTOPHER KIPLOK  
15  
16 Subscribed and sworn to  
17 before me this day  
18 of March, 2010.  
19  
20  
21  
22  
23  
24  
25

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1 KIPLOK - HIGHLY CONFIDENTIAL  
2 you know, my reading today would seem to -- that  
3 that may make sense, but I also -- what I do  
4 recall was that this was not the end of this  
5 discussion.  
6 Q. As you read it today, do you have  
7 any recollection of whether you -- when you said  
8 "I think we're okay with the below," the below  
9 you're referring to is the first paragraph of the  
10 first e-mail in this chain?  
11 A. I actually do not have that  
12 recollection. I may well be referring to Jim  
13 McDaniel's second note to me, which it appears he  
14 had a discussion with my partner, Carolyn Levine,  
15 but I don't -- I just don't recall either way.  
16 I'm reading it, you're reading it, but I don't  
17 recall.  
18 (Continued on next page for jurat.)  
19  
20  
21  
22  
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24  
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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X	:	
In re:	:	Chapter 11
	:	
LEHMAN BROTHERS HOLDINGS INC., <i>et al.</i> ,	:	Case No. 08-13555 (JMP)
	:	
Debtors.	:	(Jointly Administered)
	:	
	:	
-----X	:	
In re:	:	SIPA Proceeding
	:	
LEHMAN BROTHERS INC.,	:	Case No. 08-01420 (JMP)
	:	
Debtor.	:	
	:	
-----X	:	

**EXHIBIT CROSS-REFERENCE LIST FOR DEPOSITION READ-IN**

<b>Deposition Exhibit Number</b>	<b>Trial Exhibit Number</b>	<b>Deponent / Witness</b>
1	M. 1	Brown, Exall, Lewkow, Messineo
19	M. 2	Exall, Kirk, Klein, Lewkow, Tonucci
25	M. 3	Frelinghuysen, Lewkow, Messineo, Rosen
27	M. 38	Lewkow
47	M. 59	Tonucci
50	M. 160	Rosen
71B	M. 173	Tonucci
74B	M. 61	Blackwell
83B	M. 73	Petrie
86B	M. 102	King, Romain
87B	M. 103	Romain
126	M. 188	Tonucci
136A	M. 8	Tonucci
137A	BCI Ex. 576	Tonucci
138A	M. 111	Tonucci
140A	M. 595	Tonucci
143A		Tonucci
143B	M. 192	King
144A	M. 47	Keegan, Malloy
145A	M. 55	Tonucci
148A	M. 21	Tonucci

<b>Deposition Exhibit Number</b>	<b>Trial Exhibit Number</b>	<b>Deponent / Witness</b>
149A	M. 52	Klein
150B	M. 571	Denig
157A	M. 618	Petrie
216	M. 108	Exall
237	M. 591	Denig
272	M. 214	Petrie
274	M. 40	Petrie
279B		Exall
280B	M. 218	Exall
281B	M. 107	Exall
282B	M. 26	Exall
283A	M. 31	Romain
301A		Keegan
302A		Keegan
307A		Keegan
316	M. 221	Kirk
321		Kirk
326	M. 51	Kirk
361A	M. 228	Romain
377A	M. 105	Romain
378	M. 604	Romain
381	M. 408	Klein
385	M. 580	Romain

<b>Deposition Exhibit Number</b>	<b>Trial Exhibit Number</b>	<b>Deponent / Witness</b>
388A	M. 231	Romain
388B	BCI Ex. 191	King
389A	M. 572	Romain
389B	M. 658	King
390A	M. 227	Romain
390B	M. 659	King
391A	M. 232	Romain
392A	M. 10	Romain
394A	BCI Ex. 672	Romain
395A	M. 575	Romain
396A	M. 576	Romain
397A	M. 577	Romain
398A	M. 578	Romain
399A	M. 443	Romain
400A	M. 497	Romain
401A	M. 579	Romain
402A	M. 233	Romain
403A	M. 581	Romain
449	BCI Ex. 422	Frelinghuysen
489	M. 9	Brown
532		Brown
562D	M. 507	Hraska II
563C	M. 248	Rosen



<b>Deposition Exhibit Number</b>	<b>Trial Exhibit Number</b>	<b>Deponent / Witness</b>
579B		Lewkow
606	BCI Ex. 476	Rosen
613A	BCI Ex. 364	Lewkow
622	BCI Ex. 368	Rosen
631	M. 136	Rosen
658C		Malloy
669B	M. 430	Frelinghuysen
670B		Frelinghuysen
671B	BCI Ex. 514	Frelinghuysen
672B	BCI Ex. 515	Frelinghuysen
675B	BCI Ex. 517	Frelinghuysen
676B		Kiplok
677B	BCI Ex. 518	Kiplok
679B	BCI Ex. 520	Kiplok
682	BCI Ex. 645	Messineo